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REPORTER'S RECORD

VOLUME 35 OF 44 VOLUMES

TRIAL COURT CAUSE NO. 07-CR-885-B

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STATE OF TEXAS	:	IN THE DISTRICT COURT
	:	
VS	:	138TH JUDICIAL DISTRICT
	:	
MELISSA ELIZABETH LUCIO	:	CAMERON COUNTY, TEXAS
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JURY TRIAL - DAY 4

On the 7th day of July, 2008, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable **Arturo C. Nelson**, Judge Presiding, and a petit jury, held in Brownsville, Cameron County, Texas.

Proceedings reported by computerized stenotype machine.

ORIGINAL

FILED IN
COURT OF CRIMINAL APPEALS

AUG 06 2009

Louise Pearson, Clerk

Adelaido Flores, Jr.
Certified Shorthand Reporter

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P R O C E E D I N G S

(Defendant present; Jury not present.)

THE COURT: Call now the State of Texas
versus Melissa Elizabeth Lucio, Cause Number 07-CR-885-B.
Let the record reflect that the defendant is present along
with the Honorable Adolfo Cordova, Pete Gilman
representing the Defendant. For the State, Mr. Al Padilla
and Joe Krippel and Maria De Ford.

Call your first witness.

MR. GILMAN: My first witness is Dr. Kuri.

THE COURT: Dr. Kuri was previously under
the Daubert motion?

MR. PADILLA: At this time, we would like
to proceed on that motion, Your Honor.

THE COURT: Okay. Dr. Kuri, would you
please stand up and raise your right hand, sir.

(Witness Sworn in By The Court.)

JOSE KURI, MD,

having been first duly sworn, testified in re: Daubert
Motion, as follows:

DIRECT EXAMINATION

BY MR. PADILLA:

Q Doctor, would you please state your name for the
record?

A Jose Kuri.

1 Q And Dr. Kuri, are you a licensed medical doctor?

2 A Yes.

3 Q And how long have you been licensed?

4 A Licensed in Texas?

5 Q In Texas, yes, sir.

6 A Since '75.

7 Q And do you have an area of specialty in your
8 field?

9 A Yes, sir, in neurosurgery.

10 Q And how long have you had that expertise as a
11 neurosurgeon? How many years?

12 A I was -- since '66, I have been a board
13 certified neurosurgeon for 53 years.

14 Q Are you licensed as a pathologist? Are you
15 licensed as a pathologist?

16 A No.

17 Q Okay.

18 A No.

19 Q Have you ever in the past ever conducted any
20 pathological work?

21 A Yes, sir.

22 Q When was that?

23 A Okay. Well, you want me to answer your question
24 by answering the question, or to tell you the story of my
25 participation?

1 Q I don't need the "story," sir. When was the
2 last time that you performed an autopsy as a pathologist?

3 A It's been more than 32 years.

4 Q When is the last time, sir, as a medical doctor
5 you gave an opinion as to the cause of death of an
6 individual?

7 A I don't remember, but in my specialty it is very
8 common with the head injuries and car accidents, things
9 like that. But to tell you -- but you can imagine with my
10 age how many times I have been.

11 Q I can respect that.

12 Again, have you ever in the past acting as
13 a medical doctor ever given or provided the cause of
14 death, and given a death certificate on the cause of
15 death?

16 A Can you explain better? Just to be sitting
17 here, like in this case?

18 Q Well, no. As a medical doctor --

19 A Okay.

20 Q -- have you ever provided -- first, have you
21 ever done an autopsy? Have you?

22 A Not in the United States.

23 Q So, therefore, have you ever given the cause of
24 death or a reason for death on a person?

25 A Specifically, I don't remember. I don't

1 remember.

2 Q Well, is it a part of your practice to give an
3 opinion on the cause of death of an individual?

4 A No, sir. My practice is to save lives.

5 Q And so if you have a patient who expires, do you
6 do anything to ascertain why that person expired or not?

7 A What is the reason that the patient died? That
8 is part of what I know.

9 Q That's what you know, but do you ever perform an
10 autopsy?

11 A No, sir. In United States, in the Rio Grande
12 Valley, it wouldn't be by a judge or judicial order, we
13 wouldn't do any autopsy. So that is -- we don't do like
14 in my country where they had the practice -- I hope you
15 let me tell you of my practice. That was different. The
16 order here because of the judicial system, we have
17 advanced in the medical system. So on autopsies -- forget
18 about it. The pathologist do it and the ordinary doctors
19 do, it. And you keep asking me the same question. I am
20 not trying to be confrontational. I want to help and to
21 clarify.

22 Q And I'm not being confrontational either, sir,
23 but I'm trying to figure out first what your field of
24 expertise is; and secondly, if you've ever in the past
25 ever done an autopsy? And, obviously, you are not a

1 pathologist.

2 Have you drawn an opinion -- let me ask you
3 this. Are you familiar with the child, Mariah Alvarez?

4 A Yes, sir. And it's a sad case.

5 Q Sad case? At any time did you have an
6 opportunity to examine the brain --

7 A No.

8 Q -- of Mariah Alvarez during the autopsy?

9 A No.

10 Q Were you able to examine the microscopic slides?

11 A No -- no. The report -- I read the report as
12 well and the deposition.

13 Q Did you have an opportunity at any time, sir, to
14 examine Mariah's eyes, the retinas? The eyes? Did you
15 ever have an opportunity to examine them?

16 A (Laughs). No, sir. How can I examine the
17 retina when I didn't examine the patient?

18 Q So it's my understanding that the examination of
19 the child of the body would have been necessary for you to
20 draw a proper medical conclusion, would it not?

21 A Everything that you have in your hand, this
22 report, sir, if you don't have any -- if you have never
23 seen the patient, you are asking me questions, or are you
24 giving me authority to ask questions? I read the
25 report -- the pathology report, and the deposition. What

1 test do you want me to do? I didn't examine the patient,
2 but I read the report. But I feel that in the matter of
3 the brain, as far as the pathology of the brain, I have
4 tremendous experience, and not because I am Jose Kuri, but
5 because of my years of practice in medicine, where at that
6 time we didn't have anything except the patient and the
7 autopsy.

8 Q Tell me, Doctor, everything that you examined to
9 draw a conclusion in this case? What did you examine?

10 A The report.

11 Q Was it the pathology report?

12 A The pathology report and the deposition.

13 Q Have you ever in the past, Doctor, testified to
14 a cause of death of an individual?

15 A But -- can you elaborate that more, "cause of
16 death"?

17 Q Have you ever been asked to give testimony in
18 court to --

19 A To be like today? Like an expert in that part
20 of the brain only, if I have been?

21 Q Yes.

22 A No.

23 MR. PADILLA: I pass the witness, Your
24 Honor.

25 THE COURT: Mr. Gilman?

CROSS-EXAMINATION

BY MR. GILMAN:

Q Dr. Kuri, you're here to testify only dealing with the brain injuries of this child; is that correct?

A Yes, sir.

Q Now, I have not asked you to draw any other conclusions or anything, just read the autopsy report and the deposition that we took of Dr. Farley. And then you sat in here for part of her testimony the other day; is that correct?

A Yes, sir. Excuse me if I drink water because I take medication for the blood pressure.

Q Sure.

And you're not contradicting Dr. Farley's blunt force trauma to the head as the cause of death of this child?

A No.

Q You're merely explaining or going to explain the injuries dealing with the brain and the possibilities from that injury; is that correct?

A Yes, sir.

Q Now, you were trained in El Salvador; is that correct?

A No. I was trained here in the United States in Columbia University and University of Texas. Then I went

1 to El Salvador to pay the scholarship to the government
2 for 20 years. And then I came back to the United States.

3 Q And while you were in El Salvador, you were
4 active in medical school in El Salvador?

5 A Yes. That is why when you and I talked when you
6 asked me to review this case because it's -- and I told
7 you that I have this -- I'm sorry, that the jury is not
8 here -- you know, on this one.

9 Q Those are certificates of completion from the
10 American Board of Forensic Medicine?

11 A Yes.

12 Q And American College of Forensic Examiners?

13 A Yes, sir.

14 THE COURT: You wish to make Xerox copies
15 and admit them into evidence?

16 MR. GILMAN: Yes, please. I am going to
17 make copies of them.

18 THE COURT: Any objections?

19 MR. PADILLA: No, Your Honor.

20 THE WITNESS: I don't know if he saw the
21 diploma. I don't know.

22 MR. GILMAN: He is going to make the copies
23 for the Court so we can put it in evidence.

24 THE WITNESS: All right. And I told you
25 that I have a diploma of the board, but I -- that is not

1 part of -- this is a type of curriculum. But it's not
2 based on that. I am not going to use it. That kind of
3 paper it's like -- and I told you the ink -- the pen
4 without the ink is just paper. It's a credential. My
5 knowledge is in that part that I am going to talk to you
6 about.

7 Q (By Mr. Gilman) Okay.

8 A When I went back to El Salvador -- and many of
9 the people that are here, they were not born -- this --
10 the medicine, we don't have a CAT scan. We didn't have
11 the MRI. So we didn't have anything except the patient.
12 So the autopsy is actually of the knowledge because it
13 goes to the television, to the courthouse and transferred,
14 like I said, to the judicial system. Usually, I would
15 order -- I ordered autopsies in the hospitals. We don't
16 do hospital autopsies in the Rio Grande Valley except
17 through a judge.

18 MR. PADILLA: I'm going to object to the
19 answer being nonresponsive to the question asked.

20 THE COURT: Ask your question, Mr. Gilman.
21 It's not question and answer.

22 MR. GILMAN: All right.

23 Q (By Mr. Gilman) Dr. Kuri, your training in the
24 United States, your years of experience in the United
25 States has been dealing with what?

1 A No, no. You asked me a question before.

2 Q Yes, sir.

3 A And I am going to tell you. When I went back to
4 El Salvador, I was professor of medicine in neurology. We
5 didn't have neurosurgery in Latin America. We are very
6 few. So I went to the medical school. And for 19 years
7 all the autopsies were done in the general hospital, they
8 kept the brain for me to give class. So we -- in the
9 classroom we have the students discuss the case medically,
10 the clinical symptoms. And after that we took the brain
11 of the patient who died and made dissections. So 19 years
12 of doing that every Friday, studies of the brain in my
13 hands, and cutting, and learning the history -- that was
14 the learning. And that is the learning in the history of
15 medicine. When nothing was done, the medicine, the
16 pathology where we talked to the doctor, the autopsies
17 taught the doctor medicine.

18 So to answer the question, yes, sir. I was
19 involved in the medical school and I worked with the brain
20 for 19 years, basically, in my hands.

21 Q And your -- your work here in this country is
22 with neurosurgery; is that correct?

23 A Yes, sir.

24 Q And what does neurosurgery have to do with the
25 brain?

1 A Neurosurgery is brain. I was the -- let me see.
2 "Neuro" involves the nervous system. The nervous system
3 is brain, medulla, the spinal cord. And surgery,
4 neurosurgery is to perform surgery in the brain. And it
5 depends upon the pathology of the brain. As an example --
6 you want an example?

7 Q Yes.

8 A Head injuries, depressed fracture, blood clot,
9 tumor of the brain, malformation. So we open the skull
10 and remove the lesion when it is possible.

11 Q And based on the autopsy report that you
12 reviewed and studied, as well as the deposition of this
13 child, you were able to understand and are here to testify
14 only as to what your findings are based upon that autopsy
15 report and the deposition; is that correct?

16 A Well, tell me again. Can you ask your question
17 again?

18 MR. GILMAN: Your Honor, I offer these into
19 evidence.

20 THE COURT: Show them to opposing counsel.

21 MR. PADILLA: We have no objections.

22 THE COURT: Defendant's Exhibit No. 4 and 5
23 will be admitted.

24 **(Defendant's Exhibit Number 4 & 5 admitted)**

25 Q (By Mr. Gilman) Your expertise in neurosurgery

1 relates to the brain because of brain injuries?

2 A Yes, sir.

3 Q Okay. And you're here to testify about the
4 brain injury that this child suffered, and you're here to
5 testify based upon the findings in the deposition as well
6 as the findings in the autopsy report; is that correct?

7 A Yes, sir.

8 Q You're not here to contradict what Dr. Farley
9 said the cause of death was?

10 A No, sir.

11 MR. GILMAN: I don't know what more the
12 Court wants.

13 THE COURT: The burden is not mine,
14 Mr. Gilman; it's yours.

15 MR. PADILLA: May I ask a question?

16 THE COURT: Yes, sir.

17 **REDIRECT EXAMINATION**

18 **BY MR. PADILLA:**

19 Q Doctor, did you prepare a written report of your
20 findings in this case?

21 A No, sir.

22 Q Okay. And Doctor, as part of your review of the
23 documents in determining whatever your opinion is on this
24 case, did you have an opportunity to review an eye
25 pathology lab report?

1 A What I have here, this says Valley Baptist
2 Medical Autopsy Report. This one?

3 MR. PADILLA: May I approach?

4 THE COURT: Yes, sir.

5 Q (By Mr. Padilla) Just so we can cut to the
6 chase, let me show you this document and ask you, sir, if
7 you have had an opportunity to review this document prior
8 to providing your opinion on this matter?

9 A This document?

10 Q Yes.

11 A I never saw it.

12 Q Never saw it? Okay. So the only thing that you
13 saw, then, was the autopsy report; is that correct?

14 A Yeah, and the deposition.

15 MR. GILMAN: Was this ever given to us?

16 MR. PADILLA: Sure, it was.

17 MRS. DE FORD: It's part of the --

18 MR. GILMAN: Wait a minute, please. Just a
19 second.

20 Q (By Mr. Padilla) Doctor, this report was
21 attached to the autopsy report, original autopsy report --

22 MR. GILMAN: Al, it's in --

23 Q (By Mr. Padilla) -- that you --

24 MR. GILMAN: -- you've seen it.

25 Q (By Mr. Padilla) I will ask you again, Doctor:

1 Have you seen that document that's attached to the
2 pathology report?

3 A I don't know. I don't remember that.

4 Q You don't remember seeing it? Okay. So then --

5 A If I saw it, I don't have it in my brain.

6 Q Well, let me ask you this. If you did see it
7 and you had an opportunity to review it, did it assist you
8 in coming up with your determination concerning what you
9 are going to testify to here this morning?

10 A Well, you see what I am going to testify, you
11 are going to ask me questions.

12 Q My question is this: Do you remember seeing it,
13 yes or no? Yes or no?

14 A No.

15 Q So, then I can assume if you didn't see it, then
16 you didn't use it to draw an opinion, correct? Yes or no?

17 A Tell me again because you --

18 Q If you didn't use it and you didn't see it, you
19 couldn't have used the information in this report to draw
20 an opinion that you are going to testify about today; is
21 that correct? Yes or no? Yes or no, sir?

22 A No.

23 MR. PADILLA: That's all I have. I pass
24 the witness.

25 THE COURT: What is Dr. Kuri going to

1 testify to?

2 MR. GILMAN: He is going to talk about --

3 THE COURT: Unless we go into what his
4 opinion is going to be, we don't know whether the doctor's
5 opinion is valid.

6 MR. GILMAN: His opinion as to the cause of
7 death, Judge, is going to go into the -- the doctor kept
8 -- Dr. Farley kept talking about 24 hours. Dr. Kuri is
9 going to be testifying that he has seen blunt force trauma
10 to the brain causing hemorrhage and death as much as 48
11 hours. He is going to be testifying that there was no
12 shake in this -- that there is no indication of shake in
13 the brain.

14 THE COURT: He didn't see the brain.

15 MR. GILMAN: No. From the pictures and
16 from the autopsy report -- excuse me -- from the autopsy
17 report he is able to draw, based upon what the testimony
18 was in the deposition, as well as the autopsy report, that
19 he can testify that there was no shaking.

20 THE COURT: I don't know if those areas are
21 areas of expertise.

22 MR. PADILLA: If that's what he's going to
23 testify to, but we haven't heard what he is going to
24 testify to because we have no written report.

25 MR. GILMAN: Well, we have never asked him

1 to give a written report, Judge.

2 THE COURT: What I want to do is I want to
3 figure out what his testimony is going to be and if it's
4 limited to those areas that's within his areas of
5 expertise.

6 MR. GILMAN: He is only going to be talking
7 about the brain, Judge, just the brain. We are not
8 talking about any of the other injuries on the body.

9 THE COURT: If it's limited to those areas,
10 I'm going to allow it. If you get far afield of his
11 expertise, you know, then we have to stop and revisit it.

12 MR. PADILLA: That's fine.

13 MR. GILMAN: That's fine. All we're
14 interested in is the brain, Judge.

15 THE COURT: Bring the jury in.

16 THE BAILIFF: All rise for the jury.

17 **(Jury present, defendant present.)**

18 THE COURT: You may be seated. Thank you
19 very much. Good morning, ladies and gentlemen of the
20 jury.

21 PANEL MEMBERS: Good morning.

22 THE COURT: Did you-all have a good
23 weekend?

24 PANEL MEMBERS: Yeah.

25 THE COURT: Again, I remind you of the

1 previous instruction. You're not supposed to discuss this
2 case until the last bit of evidence is in. You are not
3 supposed to be talking with each other or anybody else.
4 Mr. Gilman?

5 MR. GILMAN: Thank you, Judge.

6 THE COURT: Dr. Kuri has already been sworn
7 to tell the truth and he is going to be the Defendant's
8 first witness. Proceed, Mr. Gilman.

9 MR. GILMAN: Thank you.

10 **JOSE KURI, MD,**

11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 BY MR. GILMAN:

14 Q Dr. Kuri, would you please state your name for
15 the jury?

16 A Jose Kuri.

17 Q And you are a doctor living here in Brownsville,
18 Cameron County, Texas, sir?

19 A Yes, sir.

20 Q Can you please explain to this jury your
21 training in medicine?

22 A Yes. At my age, you can imagine the long
23 history of my practice. I started medicine more than 50
24 years ago. The medicine like every field in the area of
25 education has increased. Computers, radio, telephone,

1 it's amazing. But the primary study of medicine and
2 history of medicine was the history of the patient, the
3 history of the information that the patient and the family
4 gives to the doctor.

5 MR. PADILLA: Your Honor, with all due
6 respect to the witness, the answer is nonresponsive to the
7 question asked. The question is about his educational
8 background and training.

9 MR. GILMAN: He's getting to it, Judge.

10 THE COURT: I understand. Answer the
11 question, Doctor, please.

12 THE WITNESS: I was under the impression I
13 was answering the question about the history, however,
14 through the autopsies.

15 THE COURT: Your training and your
16 education, Doctor.

17 THE WITNESS: My training and education
18 was -- I started in medicine, and later I came to the
19 United States and studied at Columbia University surgical
20 pathology, which is pathology. And then I came to the
21 University of Texas and I studied neurosurgery. At the
22 time I finished my neurosurgery, there were 714 doctor
23 neurosurgeons in the United States. So I went back to
24 El Salvador, to my country. And I was, out of
25 four million people, the only neurosurgeon.

1 Neurosurgeons, didn't exist.

2 So the practice we had was from trauma,
3 accidents, everything, tumors, psychosurgery, lobotomies
4 for psychiatric patient, everything. And I came here, and
5 I was the only neurosurgeon for Brownsville for 16 years.
6 What is learning? Practice by learning in the practice.
7 But basically it was through clinical skills of
8 examination and history of the patient, added with the
9 techniques.

10 For instance, in '75 the year I came was
11 when the CAT scan came to the science -- and medical
12 science. And they defied the MRI. How did I do my
13 surgery? Examination of the patient. Long time
14 operation, we didn't have that in the procedure. So my
15 training is training -- is learning through students,
16 through autopsies. That is the only way. And in
17 medicine, in a big hospital, a 1,000 bed hospital, the
18 patients taught me.

19 And the doctor ordered -- in Latin America,
20 doctors order the autopsy, was the pathologist. And then
21 the neurosurgeon was part of the learning. Autopsy in
22 United States, at least in Rio Grande Valley, is sent to
23 the medical -- to the legal system we do autopsies.
24 Otherwise, we don't do like -- we do it to learn -- to see
25 what the patient died of. When he is legally dead --

1 MR. PADILLA: Your Honor? Again, with all
2 due respect to the Doctor, I'll object as the answer being
3 nonresponsive. It's not on a question and answer basis.

4 THE COURT: Just a minute, Doctor.

5 MR. PADILLA: It might be irrelevant or
6 immaterial.

7 THE WITNESS: Sir, in the process of --

8 THE COURT: Just a minute, Doctor.

9 THE WITNESS: I'm sorry. I didn't --

10 THE COURT: Ask your next question,
11 Mr. Gilman.

12 MR. GILMAN: Yes, sir.

13 Q (By Mr. Gilman) Doctor, you got your medical
14 training here in the United States; is that correct?

15 A Yes, sir.

16 Q And then you went back to El Salvador?

17 A Yes, sir.

18 Q To repay your country for them sending you to
19 the United States for your medical training?

20 A Yes, sir.

21 Q While you were in El Salvador, did you head up
22 the medical school in El Salvador? Did you help in the
23 teaching of medicine in El Salvador?

24 A Sure. When I went there, there were no
25 neurosurgeons. So what is the best way to repay? Go back

1 to the medical school and teach.

2 MR. PADILLA: Your Honor, I object. It's
3 nonresponsive. Secondly, the question with the exception
4 was leading, Your Honor.

5 THE COURT: I'm going to sustain the
6 leading part. Ask your next question.

7 Q (By Mr. Gilman) When you returned to El
8 Salvador, what if anything did you do?

9 A Practiced as a neurosurgeon on patients and
10 teach.

11 Q And what -- how long did you teach in
12 El Salvador?

13 A Until I came here.

14 Q Which was how long ago?

15 A Around '75.

16 Q And that teaching was done in a hospital, or in
17 a classroom? How was that teaching done?

18 A In both. In neurology, in the classroom and in
19 the. On Friday, part of the specimen we had was to review
20 the brains. I have to explain. When the patient die or
21 they do autopsy they keep the brain in formaldehyde for me
22 to teach the students about the patient. We read the
23 record of the patient, the medical record, and discuss
24 clinical things with the students. And after that we cut
25 the brain so we learn the correlations -- the medical

1 part -- with the rest of the brain. So for 19 years I was
2 cutting brain every weekend.

3 Q And when you came here to the United States, did
4 you come specifically to the Rio Grande Valley or did you
5 come to another part of the country?

6 A No. I had a friend who invited me to come here
7 and I came to Brownsville. He told me, we don't have any
8 neurosurgeons, and I was the only one for 16 years.

9 Q And you started practicing here in Brownsville
10 when, sir?

11 A November the 7th, 1975.

12 Q And you have been practicing here in Brownsville
13 ever since?

14 A Yes, sir.

15 Q Now, I asked you to review the autopsy report of
16 this child Mariah Alvarez; is that correct?

17 A Yes, sir.

18 Q And I also gave you the deposition of
19 Dr. Farley; is that correct?

20 A Yes, sir.

21 Q And based upon those two documents, you reviewed
22 them, did you not?

23 A Yes, sir.

24 Q And are you contradicting Dr. Farley at all in
25 the cause of death of blunt force trauma to the head?

1 A No, sir.

2 Q You agree with her finding of blunt force
3 trauma?

4 A Yes, sir.

5 Q Dr. Farley testified to the effect that there
6 were some 24 hours from the time that this patient
7 received the blunt force trauma to the time that she died.
8 In your experience as a neurosurgeon, have you seen blunt
9 force trauma that causes a brain hemorrhage and causes
10 death?

11 A You can imagine 15 years in this place alone I
12 saw half of Brownsville, maybe -- in the emergency room
13 head injuries, children in car accidents. I saw
14 everything. So I have seen injuries. That was part of
15 the -- of my specialty.

16 Q There was testimony about a 24-hour period
17 before this. Have you seen clinically a greater period of
18 time or a lesser period of time than the 24 hours that
19 Dr. Farley testified to?

20 A Twenty-four hours is not -- is not the line. It
21 depends on many factors. Therefore, I accept to
22 discuss -- to answer the question the reality so that it
23 can help because it's a tremendous responsibility to give
24 good information. A judge who is not well informed cannot
25 make justice. So my participation, as I told you, is we

1 did the brain and we asked the clinical symptoms. But--
2 depending upon the information you gave me -- I can say at
3 this time to explain the mechanism of why an injury killed
4 the baby. I don't think it was explained, at least from
5 the part I listened to.

6 Q If I were to call you, Doctor, hypothetically,
7 and say that I had a child who has fallen down stairs,
8 what are some of the questions, what are some of the
9 information that you are going to need to know from me?

10 MR. PADILLA: Your Honor, I'm going to
11 object unless they first establish that this doctor is a
12 pediatric neurosurgeon. He is describing a child.

13 THE COURT: I'm going to overrule the
14 objection.

15 Q (By Mr. Gilman) What are some of the questions
16 you're going to need to know from me? Well, let me back
17 up a little bit.

18 How important is the history that you're
19 going to receive from me before you can tell me what is
20 going to happen?

21 A The most important part for any doctor is the
22 history of the patient.

23 Q Okay. Why?

24 A I don't know if it deals with my profession, but
25 given the history -- if the patient was talking and

1 suddenly he died, that's history. Then, what sudden thing
2 did he die from? Is it the heart? Patient had a history
3 that he was hit on the head and was unconscious and was
4 not responding.

5 We see, everyday, head injuries. In
6 boxing, the knockout is brain trauma. So that history of
7 the patient is the most important information that the
8 doctor has. And a doctor who just -- for example, Mr.
9 Gilman: Mr. Kennedy had a seizure and then had another
10 seizure, and he's just 70. History is: Any seizure
11 disorder in a person over 40 years of age, equals brain
12 tumor vertebral malformation. If A young lady of 20 years
13 of age, has severe headache and has loss consciousness --

14 MR. PADILLA: Your Honor, I'm going to
15 object to the relevancy and materiality. We are talking
16 about a child that's two years old, not somebody whose 40,
17 or 70 years old individuals --

18 MR. GILMAN: We are talking about history,
19 Judge. We are talking how important the history is.

20 THE COURT: He is talking about clinical
21 history being important. I'm going to overrule the
22 objection.

23 Q (By Mr. Gilman) Go ahead, Doctor.

24 A Okay. A child has -- the family comes to the
25 doctor. My child has been having headaches, loss of

1 balance, and tendency to be drowsy, and vomiting. For how
2 long? Since last week. Constant? Yes, constant.
3 Progressing? Yes, progressing. Then, I would be afraid
4 that it would be brain tumor because if its progressive
5 because there's signs of headache. So the history is the
6 basis of the medicine. And that is where medicine got its
7 start. Medicine didn't have x-rays before. We start with
8 the history of the patient, to see if he is hypochondriac
9 or is he using a prescription of epilepsy? So history is
10 the information, and that is what really, actually, the
11 people give me time, and they want to tell the doctor more
12 and more information. And that's the basic. I prefer a
13 good history than any test, because if it's a --

14 Q What are the symptoms that you would expect to
15 see in someone who has received a blunt force trauma to
16 the head?

17 A The most important function of the brain is
18 alertness. Being alert. So when an injury happens, there
19 is a loss of consciousness, if it's severe. If it's not
20 severe, no. But loss of consciousness. Then they regain
21 consciousness or it's progressively worse. It depends on
22 the type of injury. If it's a severe injury that has
23 complications, with bleeding, swelling, inability to talk,
24 inability to move. So you take a brief examination that
25 takes about ninety seconds. Are the eyes closed, that's a

1 bad sign. Inability to move, is a bad sign. Inability to
2 talk, is a bad sign. So if the patient is unable to talk,
3 and the eyes are close and doesn't move, is dangerous. So
4 if the patient moves the extremities, it's better without
5 moving. Keeping the eyes open is better than if the eyes
6 are closed.

7 That is not in the pathological report.
8 It's the clinical part, and this is what I would like to
9 be asked from the pediatric. The child, it's different in
10 certain things. They don't have arthrosclerosis. They
11 don't have cholesterol. They have good circulation. The
12 brain has to expand more because it has room, because as
13 God created man, the structure of the brain and the spinal
14 cord, and it is by bone. You cannot touch the brain. You
15 can touch the liver like that, and the spleen, but the
16 brain, no. The spinal cord, no. It's surrounded by bone.
17 So if there is an injury to the bone, if it comes through
18 a fracture in the bone -- and that piece of fragment can
19 go into the brain, or just a contusion like in this case.
20 So in the area -- so I have -- I don't know if I can use
21 this to show to the jury the circulation of the brain.

22 Q Please.

23 THE WITNESS: Can I show down there?

24 THE COURT: Yes, sir.

25 THE WITNESS: This is the brain, but there

1 is the inside of the skull.

2 Q (By Mr. Gilman) All right.

3 A This has a cover, called a dura. Dura is a
4 membrane that covers the brain that separates the area.
5 Then we have the circulation here. (Indicating). And
6 here what we have is the -- this is the cortex that goes
7 through the brain. The brain is like part of the body.

8 THE COURT: Just a minute, Doctor, while
9 the court reporter re-positions himself.

10 (Brief interruption; Court reporter
11 repositions himself closer to the witness as he approaches
12 the jury)

13 THE WITNESS: I will try to explain to the
14 jury without too much pressure.

15 The brain and the pathological report talks
16 a lot about the temporal lobe. This is the temporal lobe.
17 This is the frontal lobe. This is the front. The
18 parietal, and that's the temporal. And this is the area
19 where the motor -- all of the cells, in order to move,
20 like the hand or the body are here, and there is sensation
21 over here. This is the artery or the base of the skull.
22 This is the midline, like half from here, And we see one
23 part of the ventricle. And the most important part is
24 here, the brain, and the brainstem. And this is part of
25 the spinal cord. This is the section of the brain on one

1 side and a section of the brain on this half. It was
2 mentioned in the pathological report, it's the ventricle.
3 The cavities contain fluid. This is the membrane around
4 here, which is this brain. And this part is fluid. This
5 is fluid, and here is more fluid.

6 The spinal fluid, which is the fluid that
7 comes when they do a spinal tap, is this fluid.

8 All right. So in the baby, these
9 injuries -- when the head grows up in a child in the first
10 months of life, you can touch here and depress, because
11 the skull hasn't closed, hasn't closed over a year. In
12 two years it's closed. So when there's an injury that is
13 blunt like in any part of the body, there's swelling. So
14 this bone here, if the brain has expanded but does not
15 push the bone because the bone is already closed. So
16 there is pressure inside -- inside of the brain. So the
17 brain is under pressure.

18 Okay. Which are the symptoms of increased
19 intracranial pressure? Symptoms: Headache, blurred
20 vision and vomiting. Those are the early symptoms.
21 Gradually, the patient becomes somnolent, drowsy and
22 unable to move. Okay. But the brain has two compartments
23 inside of the skull, the pterion (sic), which tends to
24 separate the part, and the supra pterion (sic) which is
25 the brain, and the other which is the brain stem. It's

1 like a tree. Brainstem is like the trunk of the tree,
2 then the branches. The branches, is the brain. And the
3 trunk is the brainstem. They use to call it "The Tree Of
4 Life." With any pressure, it will kill the patient.

5 It is very unusual that a patient would
6 exhibit head injury immediately. It takes time. So when
7 the brain swells, it has to look for a place to go out and
8 it goes through that hole called that is called pterion,
9 under pressure, and the patient becomes ridged like that.
10 When he becomes ridged, it is close to death. So, that
11 was my training, head injuries. Is the patient alert, can
12 talk, can move. How did he move? Can he react to the
13 painful stimuli? Does he respond to questions? So, that
14 is part of the analysis.

15 So now we have a CAT Scan, and medically.
16 The thing, medically, is drowsiness. Nobody is going to
17 die of a head injury without passing through
18 unconsciousness. You have to be unconscious to die. You
19 have to be unable to open the eyes, unable to respond, and
20 in a deep coma. So, sir, if I see a patient who receives
21 an injury, and below the eyes -- just by seeing him -- and
22 then he stops moving his hand, and, instead, is trying to
23 take the IV out, he will starts with this movement like
24 that, with the eyes closed. This movement is a section,
25 and it's been done for more than 18 years of age of that

1 experiment.

2 So when a patient dies of a swelling of a
3 brain tumor or hemorrhage or edema of the brain is because
4 the brain tries to expand to come out and go through.
5 That's why you have the hernia that I mention. The
6 peduncle which is part of the brain under pressure.

7 So if I want to drink water like this, it's
8 the movement from my brain to the spinal cord, from my
9 spinal cord, to my hands. If somebody pinches me here, I
10 feel it from here to the spinal cord. So the brain is
11 connected to the body through the brainstem. And when
12 that is under pressure, it becomes separated. And after
13 the separation comes respiratory rest, and then the
14 patient dies. So it's a process that is not just in one
15 hour. So that is what is important, the information --
16 where the doctor says.

17 So this is the moment that I need that
18 information. I need the information to give because I am
19 not going to contradict this one. I am not going to
20 contradict the expert here of the people. What I'm going
21 to do, is answer your question and answer the question of
22 the history to see what happened in 24 hours at the moment
23 he died.

24 THE COURT: Proceed, Mr. Gilman.

25 MR. GILMAN: Thank you, Your Honor.

1 Q (By Mr. Gilman) Is it possible to have a
2 traumatic -- a blunt force trauma hemorrhage by falling
3 down the stairs?

4 A Yes.

5 Q And is it possible to have a falling down stairs
6 two days before death and the death was caused by a blunt
7 force trauma to the head?

8 A Well, this patient died of blunt trauma.
9 Falling from the bed is the most frequently accident that
10 children have. Falling from the steps, okay, that can
11 produce that. Because this patient has several areas at
12 the same time -- occurring at the same time -- in the
13 brain. So subarachnoidal, and also subdural and in the
14 dura, so the brain was yellow, full of blood and swelling.
15 So there was no way to discuss that -- there was edema,
16 swelling and pressure. So a fall from a stair is a blunt
17 trauma. Any information clinically that I need to put the
18 time because we're talking about 24 -- 48 -- 24 -- 12
19 hours.

20 Q Okay. And if, roughly, 12 hours later, there
21 was vomiting, would that be of significance?

22 A Yes.

23 Q Okay.

24 A I mentioned vomiting as one of the symptoms of
25 increasing intracranial pressure. But 12 hours of what?

1 Q I'm sorry?

2 A Twelve hours of what?

3 Q Twelve hours after the fall, some 12 hours after
4 the fall there is vomiting, and the beginnings of being
5 drowsy --

6 A Well, yeah.

7 Q -- are these indications?

8 A Yes. Well, vomiting is a sign of increasing
9 intracranial pressure, as I mentioned before. Okay.
10 Drowsiness, also favors increasingly -- becoming
11 disoriented. Twelve hours after the accident, is that
12 what --?

13 Q Yes.

14 A In that 12 hours? Okay. (Writing on Board)
15 There was an accident, and death. So if he vomited and
16 became drowsy, that is a symptom, a result of the brain
17 swelling and hemorrhaging.

18 Q How would you expect these symptoms to progress
19 from the time of the injury til the time of the death?

20 A Okay. What that type of hemorrhage affecting
21 the area that I mentioned here -- which would be doing
22 pressure -- and it would be paralysis. He wouldn't move.
23 Is there evidence that he moved or not?

24 Q I have -- from what we have been able to --

25 MR. PADILLA: Your Honor, I'm going to

1 object, Your Honor, to this witness being told what other
2 evidence there is out there, Judge. I object. I don't
3 think that the question is properly couched.

4 THE COURT: The objection is what, sir?

5 MR. PADILLA: First and foremost, it is
6 assuming facts not in evidence, Judge. If he is going to
7 be told a certain facts issues, it assumes facts that are
8 not in evidence before this jury. So I would object on
9 those grounds.

10 MR. GILMAN: I disagree, Your Honor,
11 because all of the facts that I am going to give to this
12 doctor are in evidence, and they are in evidence because
13 of the video of Mrs. Lucio at the time that she was at the
14 police station. All of this -- all of these symptoms were
15 given to the police.

16 THE COURT: I'm going to overrule the
17 objection at this time. Let's keep it in question and
18 answer form.

19 MR. GILMAN: Yes, sir. Thank you.

20 Q (By Mr. Gilman) Doctor, if there is evidence
21 that on a Thursday afternoon, a child fell down the stairs
22 and a Friday morning a child was vomiting, on Friday
23 evening the child was somewhat lethargic and not opening
24 their eyes very much and started to cramp, had forms of
25 the locked jaw, and Saturday morning the jaws were shut

1 tight, and then Saturday evening -- Saturday
2 afternoon/evening, the child passed, are those symptoms
3 that you would be interested in knowing if you were trying
4 to treat this child prior to death?

5 A Well, these are the cases that I've seen. This
6 is not the first case. Those type of cases that I have
7 seen, that they fell, and they become drowsy. I open the
8 skull, and equate the hematoma with some type of edema.
9 So I remove the bone out to avoid the pressure.

10 MR. PADILLA: Your Honor, the response is
11 totally unresponsive to the question asked, and I object
12 to that.

13 THE COURT: He is talking about what he has
14 seen. Repeat your question.

15 MR. GILMAN: I'll ask Al to read it back.

16 (Record read by Court.)

17 THE COURT: So -- rephrase your question.

18 (Interruption held; Reporter repositions
19 himself to original position)

20 Q (By Mr. Gilman) The symptoms that you are
21 looking for, the symptoms that you are needing to get from
22 in the way of history are telling you what? Do they -- do
23 they tell you how far along or to what degree a person's
24 injury that they have sustained?

25 A From what you just mentioned?

1 Q Yes, sir.

2 A And reading the autopsy report, is hemorrhage,
3 edema and pressure in the peduncle, in the brainstem, and
4 hemorrhage in the brainstem. It's okay. But clinically
5 if the patient fell, and the child has some elasticity,
6 and as I mentioned the child has -- they have better
7 circulation in the brain -- the brain can tolerate more
8 pressure. But symptoms, classical symptoms, they call
9 triad, T-R-I-D-A-I (sic, "triad?") symptoms. Vomiting,
10 blurred vision, and headaches. That was the information.
11 In the injury, we have vomiting and drowsiness. Was the
12 child drowsy?

13 Q Yes.

14 A Okay. That was related to the accident.

15 Q Okay.

16 A Then the brain is getting worse through time.
17 And then I was talking before about the kind of brain
18 movement. What kind of movement she becomes ridged. You
19 said she begins to cramps. Any information about the
20 movement?

21 Q She seems to be tired, lethargic, doesn't
22 respond in talking with people, and then later on she gets
23 jaws tight, and her body seems to tighten up.

24 A Okay. That's part of the complication of the
25 previous to death. When they become decerebrated,

1 unresponsive, the prognosis is bad -- absolutely bad.

2 Q And once that occurs is there much of a chance
3 of saving the child if they received medical attention
4 right away?

5 A When they become like that, it's too late.

6 Q Okay.

7 A I used to operate a child because they say that
8 less than 20 years they have better prognosis after 20
9 years. But when they are decerebrated like that. When I
10 was young, I used to do it in my health (sic) -- but they
11 remain a vegetable. They don't recuperate. At the right
12 moment this was before the swelling -- the beginning to
13 vomit there or become drowsy, that's the moment that you
14 can still do it, especially now that we have the CAT scan.
15 But if he is that decerebrated, it is too late to operate.

16 Q You talked a little about the bleeding in the
17 eyes. Is there -- if you have a blunt force trauma to the
18 head which causes a hemorrhage, do you see it in the eyes?

19 A Yes.

20 Q Is it noticeable in the eyes?

21 A Not in the eyes like that, you have to do the
22 full microscopic examination. Even in the retina, because
23 that is part of the nervous system. The important
24 thing -- and I haven't mentioned it because I didn't think
25 it was necessary, obviously, if a patient is a baby shaken

1 like that severely, and brought to the pediatrician but is
2 still alive and he examines the full scopic examination of
3 the retina, and finds hemorrhage in the retina that is a
4 symptom that is bad for the baby.

5 Q The shaking of the baby?

6 A The shaking of the child. Because the arteries,
7 the vein that goes to the brain, and that goes back to the
8 heart, are like that. The brain -- this is the brain and
9 this is -- my two fingers were the brain. They shake,
10 rupture and bleed. But there is no x-ray, and there no
11 fracture, just -- then the retinal hemorrhage in the baby
12 equal to that baby shaking. That's a clinical symptom.
13 There is no mention there, because this is clinical. But
14 they mention hemorrhage of retinal. But it's not because
15 you have a hemorrhage in the brain. That is what they
16 discussed. Subdural, and subarachnoidal hemorrhage. So
17 the brain was full of blood. The retina doesn't have
18 importance. It's obvious that we are going to expect
19 that.

20 Q So you concluded -- you ruled out a shaking of
21 this baby?

22 A No, no. Remember this. This is -- this is your
23 field. This is your operating room, the court. For me,
24 no. For me, it's different. I have to give the medical
25 part. No. If we don't have any history of a contusion,

1 you see the skull clean. But somebody saw the mother
2 shaking, called the police and they take the baby to the
3 operating room -- in another case, not this one -- and the
4 doctor examines the skull, no fracture, but examined
5 through full microscopic examination, and see hemorrhage
6 with no contusion -- because shaking doesn't produce
7 hemorrhage in the skull. So if you find retinal
8 hemorrhage, that's suspicious that there was a shaking of
9 the baby, that it was caused by edema. That is the only
10 thing that is so important. But we are not talking about
11 a case like that. This is over the past. This was -- it
12 doesn't have anything to do with that. It is minimal, if
13 we are talking about visceritis.

14 Q Could the falling down the stairs cause a
15 hemorrhage in the retina, if you know?

16 A The hemorrhage in the retina is due to the
17 hemorrhage in the brain that infiltrates through the exit
18 of the optic nerve. It's part of the -- that's the
19 result.

20 Q All right. I hand you what is marked as State's
21 Exhibit No. 34. Do you see what that is?

22 A Uh-huh. Yes, sir.

23 Q Can you explain to the jury, what that shows us?

24 A Yes, understanding this is the picture. This is
25 the skull. But to understand it now, it will be easier if

1 I tell you that the technique of the autopsy to make an
2 incision here until the knife stopped at the bone, and
3 then you have the two parts, move it forward and backward,
4 and expose the skull. So, this is the skull with the
5 hemorrhage in the scalp.

6 Q Wait a minute, wait a minute. The court
7 reporter can't hear again.

8 A Okay. I'll try and talk loud. I'm sorry.

9 Q Why don't you get up there and show it up there
10 from your microphone up there because that way he can hear
11 it better.

12 A Explained about the technique. So the scalp is
13 down, and the gray area is the skull. And this is the
14 hemorrhage in the skull and the flap is the scalp.

15 Q Okay. And I will hand you here what has been
16 marked as State's Exhibit No. 28.

17 A It's practically the same. You see the hair --
18 there in the upper part -- the hair and the scalp that was
19 pushed down and the other part is down.

20 Q I hand you here what has been marked as State's
21 Exhibit No. 35. What does that show?

22 A (Reviewing the model) This is the brain. The
23 blue -- that thing is a vein. And the red thing are the
24 arteries. To understand this, the heart sends through the
25 carotid artery the blood to the brain. So everyday it

1 gives oxygen to the brain and collects through the vein,
2 and goes back to the heart, to the lungs for oxygenation.
3 So arteries are the red ones, and the red labeled "edema".
4 And this is hemorrhage -- hemorrhage of the brain. More
5 than one side. It could be right; it could be left. But
6 more than one side than the other. But it is depressing
7 to see hemorrhaging in the brain -- in the whole brain.
8 Obviously, that hemorrhage comes down and you can see it
9 in the retina. So, this is hemorrhage in the brain. What
10 else can I say? One side is worse than the other. This
11 half. It's one side than the other.

12 Q I'm going to hand you what is marked as State's
13 Exhibit No. 33.

14 A Okay. This is the dura in the brain. You say
15 the brain was blue like that? Okay. Here, when I mention
16 to you before seeing that the brain inside the cavity of
17 the brain is supra =ventriculi (sic) This is above the
18 brain. They remove the brain and we are seeing this part
19 without brain. This part is the brain. This is the dura.
20 This bluish color is the brain. And this is part of the
21 dura. We see the ear here of the baby there? And here,
22 in this hole, is where the brainstem goes there, and there
23 has been a contusion that would really kill the baby --
24 causing the damage to the brainstem. And one side is
25 worse than the other. You got hemorrhage one side more

1 than the other.

2 This part of the scalp from here is the
3 bone. This is scalp. This is hemorrhage. They removed
4 the brain. This is the base. If we pinch here, it would
5 be the eye. Under that, are the eyes.

6 THE COURT: Mr. Gilman?

7 MR. GILMAN: Yes, sir. Can I have just a
8 moment?

9 THE COURT: Yes, sir.

10 THE WITNESS: (Witness writes down on the
11 blackboard drowsiness, vomiting and rigidity).

12 MR. GILMAN: I will pass the witness,
13 Judge.

14 THE COURT: Mr. Padilla?

15 MR. PADILLA: Thank you.

16 **CROSS-EXAMINATION**

17 **BY MR. PADILLA:**

18 Q Dr. Kuri, you testified earlier that you
19 received training in Colombia, is that correct? Is that
20 here in the United States?

21 A No.

22 Q Let me ask you this. Where did you get your
23 medical training and where did you get your medical
24 license?

25 A Oh, in Columbia University.

1 Q Right.

2 A Oh, I thought that you were saying "Colombia,"
3 the country.

4 Q Isn't it true that you graduated from the
5 University of El Salvador in 1948?

6 A In 1948? Yes.

7 Q Okay. So you got your medical training at the
8 University of El Salvador --

9 A Yes.

10 Q -- in a country that is El Salvador, correct?

11 A Yes, sir.

12 Q Okay. Now, Doctor, you have been asked to give
13 certain opinions here this morning. Have you prepared a
14 report that would show your opinions on this case?

15 A No.

16 Q By report, I mean a written report?

17 A No, sir. I didn't bring it.

18 Q Now you spent a certain amount of time talking
19 about history of a patient, correct? Can you answer me
20 this: What did you look at to come up with and give your
21 opinions here today? What did you review?

22 A What I told you, this is the fifth time I
23 reviewed the --

24 MR. PADILLA: Your Honor, I object to the
25 response being argumentative. This is the first time I'm

1 asking him any questions.

2 THE COURT: In front of the jury.

3 Dr. Kuri, would you just answer the question, please.

4 THE WITNESS: Okay. I reviewed the autopsy
5 and reviewed the deposition, and I was present for --
6 probably, part of the deposition of the doctor, the lady
7 pathologist.

8 Q (By Mr. Padilla) So you were sitting out here in
9 the audience listening to what Dr. Farley was testifying
10 to, correct? Yes or no, sir?

11 A Yes, sir.

12 Q And you have now -- when you reviewed the
13 autopsy report, did you review the autopsy report and all
14 the attachments included thereto? Everything attached to
15 it, did you review that?

16 A I saw the -- the autopsy report.

17 Q And when you -- who provided you the autopsy
18 report?

19 A I'm sorry?

20 Q Who provided you the autopsy report?

21 Mr. Gilman?

22 A Mr. Gilman, yes.

23 Q Now, sir are you a pediatric neurologist or not?

24 A I'm a -- a neurosurgeon.

25 Q Excuse me. Are you a pediatric neurosurgeon?

1 A No. I am a neurosurgeon who operates on
2 children.

3 Q Well, what is your specialty, adults or
4 children?

5 A There's -- my specialty is to do both of them.

6 Q Okay. What percent of your practice, sir, what
7 percent of your active practice is with children?

8 A The -- the population of children is less than
9 the adult, okay?

10 Q Okay. So --

11 A And the -- and now you asked me, let me answer
12 the question. Pediatric and neurosurgeon, hydrocephalus.
13 I do hydrocephalus. Myeloma-lingo cell tumor, I did the
14 tumor. Trauma, that was the most I did. Being 15 years
15 alone in neurosurgeon in Brownsville, and was enough to
16 see children and adults.

17 Q I understand, sir.

18 A But the definition is later. But now at that
19 time it was neurosurgeon. So I did both of them. So it's
20 no different.

21 Q And I will ask you again. What percentage of
22 your present practice --

23 A I can't quite say --

24 Q Does it involve any children at all?

25 A I'm sorry?

1 Q Does it involve any children at all? Do you see
2 children?

3 THE COURT: Are you talking about right
4 now?

5 MR. PADILLA: In his present practice,
6 Judge.

7 Q (By Mr. Padilla) In your present practice, are
8 you seeing children?

9 A I don't want to be disrespectful. I don't hear
10 you very well. That's my problem.

11 Q I apologize, sir. What percent of your present
12 medical practice is with children?

13 A At this time I am doing surgery. In the last
14 three years, I stop doing surgery.

15 Q When you were doing surgery, sir, what
16 percentage of your practice was children?

17 A Compared with the adults, probably about
18 10 percent. The children I saw in the emergency room that
19 have hydrocephalus in the hospital. They were born with
20 hydrocephalus, and I put the shunts. But I know about
21 children -- or a in neurosurgery.

22 Q Well, as a matter of fact, sir, aren't children
23 more susceptible to injury by being shaken than an adult?

24 A Oh, sure.

25 Q Is not a child more susceptible to injury by

1 being struck across the head than an adult?

2 A Yes.

3 Q And it has to do with a lot of it, has to do
4 with their muscle buildup, correct? Because the head is
5 usually larger in the body. So, therefore, children are
6 susceptible to trauma to the head much easier than an
7 adult would; is that correct?

8 A The majority of the trauma in children is one
9 year of age by four, because they don't have good balance,
10 or they fall.

11 Q And what percent, sir, of children, or do you
12 know what percent of children actually die as a result of
13 a fall? I mean, a child under the age of 17. Do you know
14 what percentage?

15 A I don't think it existed, or that it's typical.
16 It's before they pick up the CAT Scan or after they do Cat
17 scan. So the big problem with the children is hemorrhage.
18 Trauma, is the diagnosis. With the CAT scan, you gain --
19 the statistical now are not the same like the 30 or 40
20 years ago when I was facing the child and me.

21 MR. PADILLA: May I approach the witness,
22 Your Honor?

23 THE COURT: Yes, sir.

24 Q (By Mr. Padilla) Sir, are you familiar with the
25 American Association of Neurological Surgeons? Are you

1 familiar with that organization?

2 A Yes.

3 Q I'm going to draw your attention, sir, to a
4 report called "Analysis of Pediatric Head Injuries From
5 Falls". Is that association something that you look up
6 to?

7 A Yes. It's a good association.

8 Q Okay, sir. Have you ever seen this report that
9 I have shown you here today?

10 A No. But --

11 Q Okay. But what, sir?

12 A Feel free to quote me anything from that report.

13 Q Well, sir --

14 MR. PADILLA: Let me show it first to
15 defense counsel.

16 THE COURT: Ladies and gentlemen of the
17 jury, it might be a good time to take a break. There is
18 coffee for you. Let's take a ten minute break and we will
19 start up again in ten minutes.

20 THE BAILIFF: All rise for the jury.

21 **(Jury not present 10:38 a.m..)**

22 THE COURT: We are going to take a ten
23 minute break, Doctor. Would you like coffee or anything?

24 THE WITNESS: No, sir.

25 THE COURT: We will see you in ten

1 minutes.

2 (Brief recess at 10:38 a.m.)

3 THE COURT: You may be seated. Are you
4 guys ready? Bring the jury in, please.

5 THE BAILIFF: All rise for the jury.

6 (Jury enters at 10:54 a.m..)

7 THE COURT: You may proceed.

8 MR. PADILLA: May I approach the witness,
9 Your Honor?

10 THE COURT: Yes, sir, please.

11 Q (By Mr. Padilla) Doctor, before we took the
12 break, we were discussing the American Association of
13 Neurological Surgeons. What organization is that -- or
14 who are they?

15 A It's a very serious organization for the
16 Association of Neurological Surgeons. They have, probably
17 the most represented of the neurosurgeons. It is similar
18 to the American Bar Association.

19 Q Okay. I'm going to show you a document that is
20 an "Analysis of Pediatric Head Injuries from Falls". Have
21 you ever seen this document?

22 A There are 2,000 articles in medicine every
23 month.

24 Q Okay. Have you ever seen this article, sir?

25 A No, sir.

1 Q You have not?

2 A No, but we can comment on it.

3 Q Okay. And the reason I'm asking that, sir, is
4 obviously, that would be something that you would look at,
5 would you not, in trying to analyze a pediatric head
6 injury, would you not, from falls?

7 A Sure.

8 Q Now, according to the report itself --

9 MR. GILMAN: I object to counsel asking
10 questions from a report that is not in evidence, Judge.

11 MR. PADILLA: Your Honor, at this time,
12 then, I would offer this as State's Exhibit No. 40.

13 MR. GILMAN: I object, Judge. It hasn't
14 been proven up.

15 THE COURT: There are no authoritative
16 treatise. I'm going to overrule the objection, but go
17 ahead. Before I overrule the objection, why don't you
18 show it to --

19 MR. PADILLA: Your Honor, I have.

20 THE COURT: -- Mr. Gilman?

21 MR. GILMAN: Well, I haven't read it. can I
22 have time to read it?

23 THE COURT: I understand, Mr. Gilman. I am
24 giving you an opportunity to make your legal objection, if
25 you wish.

1 MR. GILMAN: (Reads) We asked for experts
2 and now they're going to try and use this document as an
3 expert. I was never given notice of this prior to trial.

4 MR. PADILLA: That's a report, Your Honor,
5 that our office acquired on Thursday of last week. We
6 were not privy to it until we ascertained it by Doctor
7 Farley who testified.

8 THE COURT: I am going to allow you to use
9 it for purposes of cross examination, and will hold the
10 decision of admitting it into evidence until a later time.

11 MR. PADILLA: Thank you, Your Honor.

12 THE COURT: Go ahead, Mr. Padilla.

13 THE WITNESS: Can I do a favor? Can I see
14 it for one minute?

15 MR. PADILLA: Yes, sir. May I approach the
16 witness, Your Honor?

17 THE COURT: Yes.

18 THE WITNESS: (Reviews). Well, this is --
19 this is a medical article written by a group of doctors
20 that belong to the American Neurological Association. It
21 is not an official paper of the American Neurological
22 Association. It is a contribution like if I write an
23 article and send -- written by them. It's not the
24 American. They belong to the American Neurological. It
25 is an article like you've written. So we are going to

1 discuss because. This is medical; but this is not
2 medical. So the question that you have for me -- what I
3 want to tell the jury this is not the official expression
4 of the American Neurological Association. It is an
5 article written like the 2,000 articles they have every
6 month.

7 Q (By Mr. Padilla) Okay. And sir, again, what is
8 the Neurosurgeon Focus? What is that?

9 A What?

10 Q The Neurosurgeon Focus, what is that? Is that a
11 treatise? Is that something that the American Association
12 of Neurological Surgeons prepares, or uses to prepare
13 this?

14 A I don't know. They could be in a category, or
15 article.

16 Q Let me ask you this, sir. Have you, yourself,
17 ever done an analysis of pediatric head injuries from
18 falls?

19 A Can you repeat that?

20 Q Have you ever conducted an analysis of pediatric
21 head injuries from falls?

22 A Sure. That's the way I passed my board
23 examination, and --

24 Q Have you ever written an article, sir, on the
25 analysis of pediatric head injury from falls?

1 A When I did the article -- an article here in
2 Brownsville? No, because there is no time. I was alone.
3 It was a quiet group.

4 Q Let me ask you this. When was the last time
5 that you ever considered writing a paper on the analysis
6 of pediatric head injuries from falls?

7 A I wrote the book that is quoted by the American
8 Bar Association about the Spine Trial, and I don't think
9 that anybody in Brownsville have written like the American
10 Bar Association. But the American Bar Association
11 published my book in 2002 about the spine. I was planning
12 to do it about the head, but it takes time. It's not
13 easy.

14 Q Let me ask you this, Doctor --

15 A It will be easy if you ask me the medical
16 question more than --

17 Q Sir, I'll ask the question, and you provide the
18 answers, sir, with all due respect. And if you can't
19 provide the answers, say: You don't know, and we'll get
20 through this a lot quicker, sir.

21 A Okay. I haven't written any article because it
22 takes time and I was the only neurosurgeon on here.

23 Q Okay. What percentage of falls, sir, result in
24 falls by children? What percentage results in death, if
25 you know?

1 MR. GILMAN: I fail to see how that is even
2 relevant.

3 THE COURT: I'm going to overrule the
4 objection. Go ahead, Mr. Padilla. If he knows.

5 Q (By Mr. Padilla) Doctor, if you know.

6 A I don't know. To tell the jury speculation --
7 or -- I don't have any number because it varies. Now it's
8 less than before because we have the CAT scan and early
9 treatment than 20 or 30 years ago before we got the scan.

10 Q Doctor, this analysis states that of the 729
11 cases identified --

12 MR. GILMAN: Your Honor, I object to the
13 State's use of it until it's in evidence. He can use it,
14 you said --

15 THE COURT: For purposes of cross
16 examination.

17 MR. GILMAN: Right. But he shouldn't be
18 quoting from it, Judge.

19 THE COURT: I'm going to go ahead and allow
20 it.

21 MR. GILMAN: Please note my exception.

22 THE COURT: So noted.

23 Q (By Mr. Padilla) Of the 729 cases that are
24 identified as mortality rate, it provides a 1.7 percent of
25 death of children from falls; is that correct?

1 A Well --

2 Q Does your study that you haven't written yet,
3 indicate, otherwise?

4 A If it says that, that's all right.

5 Q And they say also, that when a fall is greater
6 than 15 feet --

7 MR. GILMAN: Your Honor, I'm going to
8 object to anything that the study said.

9 THE COURT: The objection is overruled.

10 MR. GILMAN: Can I have a running
11 objection?

12 THE COURT: Yes, you do have a running
13 objection.

14 Q (By Mr. Padilla) "That the fall of
15 15 percent" -- excuse me -- "higher than 15 feet is
16 tantamount to 2.4 mortality rate." Do you, yourself, in
17 your studies have any information, documentation or
18 paperwork that would contradict a finding similar to that?

19 A I respect the opinion of them, sir.

20 Q Okay. Dr. Kuri, you are not licensed as a
21 pathologist; is that correct?

22 A No, sir.

23 Q So you don't -- you, yourself, never give the
24 cause of death, correct?

25 A Tell me again.

1 Q Do you, yourself, ever provide a cause of death
2 in a pathology report, do you?

3 A I don't understand. I have signed a lot of
4 death certificates on a patient who come to the hospital
5 like this one, for example, and die. So I have death
6 certificate because of the head injuries.

7 Q Here in Brownsville, Cameron County, Texas?

8 A Well, 16 years alone in Brownsville, how many
9 children do you think I have seen?

10 Q Sir, I will ask you, how many children have you
11 seen in the 16 years of your practicing?

12 A Over 100 easily, or 500.

13 Q My question to you is this --

14 A I saw them in the emergency room. They don't
15 take them to the office. If they have injury, they call
16 me, okay? So, if the patient was severe damage, at that
17 time when I came here, there was not CAT scan. So we have
18 to do a lot of tests and different treatment. Now it is
19 much better, for the future of the children. Okay.

20 So these people who die because of the
21 injuries, I have to sign a certificate that says: Death
22 due to head injury. That's what you are referring to, or
23 what is it that you are referring to?

24 Q I am asking you, sir.

25 A No. What you are referring to, that you need an

1 autopsy to give that, or --

2 Q No.

3 A No? I gave -- sure --

4 Q And you made an issue of it earlier, sir, that
5 you were going to look at the history of a person,
6 correct, in your effort to diagnose somebody? Correct?

7 A When the patient is brought to the emergency
8 room, he doesn't come alone, or he doesn't call the
9 ambulance. The family calls the ambulance of somebody --
10 or if hit by the car, is taken to the emergency room.
11 That's the beginning of the history. How he was speaking,
12 he was moving, the extremities, whether he was
13 unconsciousness, or was bleeding -- all that. So when I
14 went to see the patient, probably it was after the
15 emergency room, calling me, and I went from 2:00 or 3:00
16 in the morning to see. That was always in the history of
17 my cases.

18 Q Doctor, is it possible for an adult to strike a
19 child with sufficient force in the head to cause the death
20 of that child?

21 A This child died because of force in the head.

22 Q Okay. Something caused the force blunt trauma,
23 correct? Correct?

24 A Sure, sure. He didn't do it by himself.

25 Q It didn't seem to be self-inflicted, correct?

1 A I'm sorry?

2 Q It wasn't self-inflicted, correct? The person
3 wouldn't be able to intentionally cause the type of injury
4 that this child suffered, right?

5 A (Does not respond)

6 I will withdraw my question, Doctor.

7 Doctor, if you have a child --

8 MR. PADILLA: May I approach?

9 THE COURT: Yes, sir.

10 Q (By Mr. Padilla) I'm going to draw your
11 attention to Exhibit 31, Exhibit 32, Exhibit 23 and 27 and
12 30. Doctor, if a child came to a hospital and you viewed
13 the injuries of that nature to a child, and the child when
14 he arrives at the hospital is deceased, do you believe
15 that -- would you draw an opinion that the child may have
16 suffered blunt force trauma due to abuse?

17 A You're asking -- I'm going to answer your
18 question --

19 Q Please.

20 A -- but not as an expert because I still am only
21 above the head, but I listened to the explanation of the
22 doctor. You want me to talk as a general doctor, just to
23 give you that information?

24 Q No, Doctor --

25 A Can you show me something? I don't want to be

1 disrespectful, but it is about the extremities. And I
2 was -- I was considering to talk about only the brain. I
3 have my opinion as a doctor because --

4 Q Well, let me ask you this. If you're sitting
5 there as a doctor, and the child is brought in there
6 unconscious, and you see those type of injuries on that
7 child, and you see what may appear to be head injuries,
8 would you as a doctor suspect child abuse as a cause of
9 death?

10 A Child abuse always has to be considered. Okay.
11 And this is -- this could be a cause of death. Child
12 abuse? Sure.

13 Q Okay. So what you've got to look at, is you
14 look at the child, you look at all of the bruising and
15 everything associated with that, and then you at that
16 time, you as a medical doctor, your would suspect that the
17 child may have died from blunt force trauma as a result of
18 child abuse, correct?

19 A Correct.

20 Q Then, you, yourself, can't, or aren't licensed
21 to do an autopsy on the child, would you, or an adult?
22 Are you licensed to do an autopsy?

23 A I have never asked if I do an autopsy, but who
24 would believe me if I have not been a neurosurgeon and I
25 presented pathology? I don't think that you have a

1 good -- I'm sorry -- a good understanding of an autopsy.
2 Autopsy is a procedure, like a surgical procedure --

3 Q All right.

4 A -- cutting the scalp, taking the whole,
5 everything out. It's a dead person.

6 Q What's the purpose of an autopsy, Doctor?

7 A That's the basis of the science, to see the
8 pathology. We reach a point that we have now is because
9 of the autopsy. It is the best learning that we compare.
10 That's where the patient can see. This is the medicine.
11 This is the medicine. And then there is the clinical
12 manifestation, and that's the way the history has been
13 made for hundreds of years.

14 Q Again, Can you tell me the reason for --

15 A You've asked me three questions already.

16 Q Just answer the first one then.

17 A Okay. The first one, as a doctor, this one
18 doesn't have anything to do with the head injury. Okay?
19 But she said that there were different ages for the
20 injuries.

21 Q Okay.

22 A Even you don't want to ask me -- and she didn't
23 explain to the jury -- but I'm going to explain to the
24 jury. She mentioned about the legal side of medicine.
25 Okay. Everybody have seen a black eye. There's not a

1 black eye in the beginning. It's red. The hemocyte she
2 mentioned, was is the process of healing the bruises. So
3 the fracture of the arm is healing. So that was not at
4 the moment of the injury. It was before because she saw
5 in the microscope the healing.

6 Q And you did hear, Doctor, that she estimated
7 that injury to be week or two weeks old. You heard that,
8 did you not? Did you hear her say that?

9 A This one --

10 Q Did you hear her say that?

11 A I don't know about that, but she said --

12 Q Nobody, Doctor, here has testified yet that that
13 arm injury happened during any alleged fall. Do you
14 understand that? Nobody is saying that.

15 A No.

16 Q Because, you know, I think you are drawing --

17 A I want to help you -- you asked me something
18 that I told you -- and I didn't mean to comment about that
19 neither, about the arm. But I'm a doctor who was trained
20 in that. But not the expert. But in the injuries, it has
21 different edges. That's the pathology, because of the
22 lymphocyte cells. It is like a tornado destroyed, then
23 came the cleaning, the fibroblast, the microcyte, then
24 come one who comes to repair. So the pathology --
25 depending on the cell that he sees, he sees the activity.

1 So this is the typical case, fracture of the humerus.
2 It's in the process of healing because she saw the healing
3 process.

4 Okay. In the head is one big hemorrhage
5 like that. This injury, she said, it was a different
6 ages -- days -- and so on. So, she's right, because she's
7 saying in the microscope that she saw hemocyte in
8 pigments. Maybe it didn't happened in one day. So we see
9 in the child, injuries of different times.

10 What we are discussing in my part here, is
11 correlating the clinical part with the brain. I don't
12 discuss the cause of death. It is injury, severe injury
13 because they hit her, could be fall, could be blunt
14 trauma. It was not the shaking of the baby because the
15 hemorrhage is in the skull. That doesn't produce
16 hemorrhage in the skull. Okay. So that was a direct
17 blunt that was hit in the head by something. She fell
18 from the bed, she fell from the stairs, or she was hit by
19 her mother against the wall. That's the type of trauma.
20 Not shaking was the trauma. So that is clear. That is
21 impossible to deny that this is a severe blunt trauma to
22 produce this hemorrhage, sir.

23 Q So that could be consistent, Doctor, with
24 striking, shaking or throwing the child?

25 A No. Shaking -- shaking itself, no. If the

1 throat -- for certain I cannot say. And she didn't say it
2 happen. It's a blunt trauma. Could be a fall? Could be
3 from hitting her -- hitting her with a hammer would
4 produce fracture of the skull.

5 Q In every case, Doctor?

6 A No.

7 Q I mean, if there is evidence that -- you heard
8 the pathologist testify that there were injuries to the
9 ears consistent with somebody being hit across the ears,
10 do you yourself have any -- from reviewing all of the
11 records, and the photographs, and the testimony, do you
12 have an opinion?

13 A An opinion about what?

14 Q To contradict that, that the child was hit
15 across the side of the head causing her to hemorrhage in
16 the ears -- in that area? Do you have any evidence, any
17 medical evidence, or any medical proof or medical opinion
18 that would contradict that?

19 A I didn't understand your question.

20 Q Doctor, you sat here during the testimony of
21 Dr. Farley.

22 A I missed in part --

23 Q Okay.

24 A -- and she didn't talk loud. So the -- if you
25 would be kind to tell me what she said.

1 Q If I remember correctly, sir, and the jury can
2 understand, Dr. Farley testified that the child had
3 injuries to both sides of her head consistent with
4 somebody either pulling her head or striking her head on
5 the side. From the photographs that you've seen, would
6 you draw -- would you draw an opinion contrary to that?

7 A Well, about the hitting on the head like that --
8 hitting on the head?

9 Q Yes.

10 A It would have to be an extreme force to produce
11 a hemorrhage. If she had a fall and hit the ear on the
12 ground and hit the other ear, it was caused by a trauma.
13 But hit by the hand, and produced the hemorrhage and
14 contusion in the ear, could be, but it would have to be
15 very severe.

16 Q Doctor, is your testimony, again, that this
17 child fell or the injuries were the result of a fall?

18 A No.

19 Q That's not your testimony?

20 A No, no, no.

21 Q I'm sorry. I thought that's what you testified
22 to.

23 A I said it was a blunt trauma that could be
24 produced -- could be produced by a fall, by hitting
25 against the wall, a kind -- that type of trauma. It's not

1 a shaking baby. Okay? So -- but anybody knows how it
2 happened specifically? So we have a severe injury
3 produced by trauma. Was not spontaneous. It was a severe
4 trauma. Okay? So that is that part --

5 Q Doctor, are you familiar with the term optic
6 nerve sheath hemorrhaging?

7 A Yes, sir. And I can explain easily and they can
8 see it.

9 Q What is that, sir?

10 A The jury can see what is. You want me to show
11 it to you, sir? Can I see it?

12 Q You can show it to the jury.

13 THE COURT: Just speak up, Doctor.

14 THE WITNESS: I'm sorry?

15 THE COURT: Just speak up so Mr. Flores can
16 take it down.

17 THE WITNESS: But they have to see the
18 optic nerve --

19 THE COURT: That's fine, go ahead. just
20 speak up.

21 THE WITNESS: Okay. This is the skull.
22 They removed the brain. But you're going to see this
23 thing here. That's the optic nerve. That's the optic
24 nerve. You see it here? These are the optic nerves. She
25 removed the brain, and you see blood here around the optic

1 nerve. This is the optic nerve. (Indicating) She
2 removed -- and there's hemorrhages. You see the
3 hemorrhage surrounding the nerve. This is the optic
4 never.

5 This is where they removed the brain and
6 this is the part where the brainstem goes to the cranium.
7 This is the frontal part. This is removing the brain, and
8 this is the optic nerve. This is blood there. And that
9 is blood surrounding the hemorrhage. (Returns to his
10 seat)

11 Q (By Mr. Padilla) Doctor, what is the Circle of
12 Zinn?

13 A What?

14 Q The Circle of Zinn? Z-I-N-N? What is that?

15 A Circle --

16 Q Yes, of Zinn.

17 A Circle of Willis or Circle --

18 Q Circle of Zinn, Z-I-N-N (Spelling by Attorney)?

19 A I don't know.

20 MR. KRIPPEL: Could I approach, Your Honor?

21 THE COURT: Yes.

22 Q (By Mr. Padilla) You testified that you were
23 able to view all the attachments to the autopsy, correct?

24 A (Does not respond)

25 Q I am going to draw your attention to the last

1 sentence of your report. Would you please read that to
2 yourself?

3 A (Reads) The letters are too small. That I
4 have to: "A constellation of --

5 Q If you can read it to yourself, Doctor --

6 A Oh, okay.

7 Q -- once you read it, I will ask you some
8 questions about that.

9 A (Reads).

10 Q Have you had an opportunity to read that,
11 Doctor?

12 A Yes, sir.

13 Q What is the Circle of Zinn?

14 A A Circle of Zinn is maybe something in the optic
15 nerve. Something specific in the optic nerve. It would
16 be a layer of the optic nerve. But no, I am not
17 ophthalmologist to go into detail of the Circle of Zinn.

18 But the report, if you read the report, it
19 is consistent. Let me see. We have this kind of -- I
20 don't want to be disrespectful -- you have this type of --
21 it seems to me like if I have a 100-dollar in the right
22 pocket and one penny in the other, if I am more worried
23 about the penny when I have the one hundred dollars in the
24 other pocket. This is about a hundred -- or a thousand
25 times more important than the retina. The retina is a

1 result of the hemorrhage. So it's part of the big
2 problem.

3 Q Doctor, what does hemorrhaging to the retina
4 lead to?

5 A A hemorrhage in the retina cannot kill the
6 patient. If the patient was shaken, and it produced a
7 hemorrhage in the retina, that means he's not dead.

8 Q Doctor, isn't it true that retina hemorrhaging
9 is manifestations of non-accidental trauma? Isn't that
10 true?

11 A That is what I was talking about in the
12 beginning, when you shake a baby, the artery produces
13 retinal hemorrhage, and goes through the holes. But they
14 don't produce hemorrhages in the scalp. So the -- here I
15 show the optic nerve. When they shake a baby like that,
16 the brain, it is smaller than the skull. And shaking of
17 the vein that goes to the sinus, rupture and it starts
18 bleeding. And there is hemorrhage in the brain that come
19 down to the parietal space and go down to the retina. So
20 it's not trauma. It's blunt trauma. So if a patient is
21 alive and I find -- first, would be grabbing his finger
22 here, but if I find a hemorrhage in the retina and I was
23 suspicious of abuse, that would be enough without any
24 fracture, and without any type of CAT scan, then the
25 patient is alive, then I check through scopic examination

1 and find hemorrhage in the retina, that means that the
2 baby was beaten.

3 Q So if you find retinal hemorrhaging on this
4 child --

5 A But he has hemorrhaging in every part of the
6 body.

7 Q Would that be consistent with a beating?

8 A It doesn't make sense -- your question. I don't
9 understand.

10 Q If they find retinal bleeding, retinal
11 hemorrhaging in the retina, in the eye --

12 A Uh-huh.

13 Q -- would that be consistent?

14 A Consistent, with what?

15 Q With the child being struck?

16 A But we have this --

17 Q Doctor? I am asking you, Doctor: Yes or no, if
18 you have retinal hemorrhaging, would that be consistent
19 with a child being struck?

20 A Yes.

21 Q Now, Doctor, I know that -- again, and I'm not
22 trying to belabor the point about the pathology, you were
23 never able to -- you didn't read any of the pathological
24 slides or anything that was provided as a result of the
25 autopsy, correct?

1 A Why would it help me to read the pathological --

2 Q I don't know, Doctor. You're the doctor. I'm
3 asking you. I don't know. You, as an expert, I want to
4 know: Did you have an opportunity to review any of the
5 anatomical slides that were prepared for the child Mariah
6 Alvarez. That's all I'm asking you, sir. Yes or no?

7 A Yes or no, what?

8 Q Yes or no: Did you review any of the slides?

9 A I didn't receive the slides. They were not
10 provided to me.

11 Q Okay.

12 A But I don't consider necessary in this case to
13 make this diagnosis.

14 Q You, yourself, did not have an opportunity to
15 review the actual brain, correct?

16 A I don't think --

17 Q Yes or no, Doctor?

18 A No, sir, I haven't received -- I haven't seen
19 the brain. I have seen the pictures.

20 Q And you also -- other than the picture you have
21 there, you didn't examine the eye of Mariah Alvarez, did
22 you? Yes or no?

23 A No.

24 Q And the examination of those items would have
25 helped your opinion, correct?

1 A I don't think that I need anything more to make
2 an opinion. You have to realize that I have dealt with
3 people living with this type of injury. I've seen them
4 alive. This is my life. That's part of my specialty.
5 Why do I need more than what I have in my hands? If they
6 die on me -- and she said that clear -- she died because
7 of the brain hemorrhage. She didn't say microscopic. She
8 said, very clearly. It was a very good report.

9 Q Yes, sir. And she also said, did she not, that
10 this child was beaten to death? Do you remember that?

11 A Well, that's different --

12 Q Well, did she say that, yes or no?

13 A I didn't hear when she said that part. I didn't
14 hear it. But she said that -- beaten or fallen -- or
15 blunt trauma.

16 Q No, no. She specifically stated that the child
17 died from a beating.

18 A I didn't hear when she said that.

19 Q Okay, sir. Doctor, if we go back to the issue
20 of history, a child suffers from brain injuries -- as the
21 ones you've see there on that exhibit there in front of
22 you --

23 A Yes.

24 Q -- could the child still be able to eat?

25 A No.

1 Q Could the child be able to drink?

2 A No.

3 Q If the child suffered those type of injuries on
4 a Thursday, could the child on Friday morning have been
5 able to eat, drink, or talk?

6 A If the injuries was on a Thursday?

7 Q Yes.

8 A And the patient had this hemorrhage? He would
9 be drowsy and unresponsive. You're not to give anything
10 by mouth to a person who cannot swallow it. It would go
11 to the lungs. It would be pneumonia. It would be due to
12 pneumonia. And they would not be able to swallow.

13 Now, on Friday if this injury happened on
14 Thursday and bled the way it bled, with severe trauma.
15 No, it wasn't drowsy.

16 Q So --

17 A -- or, unconsciousness -- I'm sorry.

18 Q If somebody were to say that the child was fed
19 cereal, Cocoa Krispies on a Friday morning, do you believe
20 that a child in that condition could have had the
21 faculties to be able to swallow, eat, and drink on that
22 morning?

23 A If the injury happened on Saturday and we had
24 this bleeding, I doubt it. I doubt it. I -- I didn't --
25 not at this moment with the eyes closed and since it was

1 unresponsive.

2 Q And you say she also suffered some kind of
3 spasms, is that correct, in her arms?

4 A No, I didn't say.

5 Q I apologize.

6 A I didn't say. I was informed that she has some
7 kind of like spasms, and that explains what they saw when
8 they removed the brain is that hole where the optic nerve
9 is. You see? That's where the brainstem passes. And
10 that is a report -- that is a report from the -- (Reviews:

11 Q Doctor --

12 A Can I read it or it's not necessary? You don't
13 want me to read it, huh?

14 Q You can read it, sir. I will give you an
15 opportunity to read it, if you want to.

16 A "The frontal temporal structure is externally
17 remarkable for side to side midline shift of the
18 mid-brain." That's the brainstem.

19 Q What would that mean to you, Doctor?

20 A Wait until I finish. Well, trauma of the
21 cerebral peduncle, in trauma of the brainstem, it was
22 compressed by the edema. That was the cause of the
23 rigidity, and of coma. If you're going to be in a coma,
24 nobody is going to be talking. They're in a coma. But --

25 Q Doctor, have you ever in your business, in your

1 practice, excuse me --

2 A Yes.

3 Q -- ever studied what -- how much force would be
4 necessary to cause a brain injury?

5 A No, sir. That is the history where we exhibit
6 that patient fell. But to study the fall, an engineer to
7 see the force, at the time of the -- that was -- that's a
8 baby of two years old. The brain is so sensitive -- very
9 susceptible. Why don't you put me the example, and I will
10 be glad to answer?

11 Q Well, no, I just want to know that you have.

12 A No, no. What for?

13 Q You read the report on brain injuries in
14 children, I just wanted to know if you ever did a study to
15 see what type of trauma was necessary to cause the
16 injuries to a child. And if you have not, I respect that,
17 and I have no problem with that.

18 A Well, there are two things in medicine -- the
19 book of medicine. It says history of symptomology. They
20 don't talk about whether it was three meters, or three
21 yards or whether it was a falling due to gravity. If you
22 have a boy of 14, and you find out through his history
23 that he fell -- I don't think that there's a grandmother
24 who has seen a child -- or a child that fell -- and was
25 worried because of a bump in the head. So this is a

1 serious injury. We're talking about -- there is nothing
2 to discuss. This was a big, serious, blunt trauma to the
3 brain to produce hemorrhage. It doesn't require to be
4 instinct to see how serious, and to see what killed the
5 baby. Or, what force it took to put the person against
6 the wall? That could do it. Falling from a stair and
7 rolling down stair by stair, could hit -- this is not
8 something like that -- even though, it will kill it, and
9 the shaking, it would not explain the bleeding in the
10 scalp and in the skull. But this was a severe trauma.

11 Q Doctor, there is not only a sign or trauma to
12 one area of the head, there are traumas to the entire
13 head -- to the entire brain?

14 A Yes.

15 Q You can see that in there. Isn't that correct?

16 A Yes, sir.

17 Q Wouldn't that be more consistent with a child
18 being struck numerous times across the head or would it be
19 more consistent with somebody falling down a set of steps?

20 A Depends on -- I wish -- I wish I had some
21 clinical information on somebody, but if the baby is
22 rolling down, it could produce different trauma.

23 Q Doctor, on the photograph --

24 MR. PADILLA: May I approach, Your Honor?

25 THE COURT: Yes, sir.

1 Q (By Mr. Padilla) Would you expect, sir, for that
2 type of trauma to cause at least a welt or some sort of
3 swelling to the exterior portion of the head, if somebody
4 came down and fell a flight of steps? Would you?

5 A Sure.

6 Q And I'm going to draw your attention, sir, to
7 picture number 30. Would you expect welts or "lumps", as
8 we normally call them, across the head if she had suffered
9 a fall?

10 A You're referring to these bruises?

11 Q No, Doctor. I am asking if there is trauma to
12 the head, sir, where the person -- where the child falls
13 and hits her head on the step, would you expect swelling
14 on the outside of the head?

15 A If she hit -- wait. Before hitting the brain
16 you hit the scalp.

17 Q The skull, the exterior -- we are talking about
18 the exterior portion of the head. If a child falls and
19 slams her head against the board, would you expect
20 swelling on the outside -- on the skin portion?

21 A Any bruise produces swelling.

22 Q Okay.

23 A Even in the abdomen you produce swelling.

24 Q If Dr. Farley testified that there was no
25 remarkable swelling on the outside of the head, do you

1 yourself have any medical proof to contradict that?

2 A (Referring to the Reporter) Can you tell me
3 what he is asking?

4 Q I'll say it again, sir. If Dr. Farley testified
5 that there was no welting or bruising outside of the
6 scalp, measurable, would -- if there was nothing
7 unremarkable other than some abrasions on the head, is
8 that something that you, as a medical doctor, you would
9 look into considering if a child fell down the steps or
10 not? And I'm just asking you.

11 A What is this? There are no bruises on the
12 scalp.

13 Q They could be caused -- but you've already
14 testified about blunt force trauma, by hitting somebody
15 across the head. You've already testified to that,
16 haven't you, sir?

17 A Yes. This is the bruises --

18 Q But there is nothing remarkable on the outside
19 of the scalp to show any kind of lumps, welts or something
20 indicative of a child hitting a step.

21 A How do you explain the bruises here without any
22 trauma outside -- the bruises on the scalp?

23 Q Let me ask you this. With reference -- how many
24 children have you treated that have suffered brain
25 injuries as a result of a fall?

1 A In my life, over 50 years old, you were not born
2 when I started practicing, and there were so few
3 neurosurgeons. You can imagine how many children I saw.
4 In 50 -- in 52 years of being neurosurgeon, when no
5 neurosurgeon was here in town, how many children -- the
6 population was -- let's say there was about 20,000
7 children in the Brownsville Independent School District.
8 How many children have I seen? It's a tremendous amount.

9 Q And, sir, what type of injuries, external
10 injuries would you normally see when a child fell?

11 A I have seen football injuries, falling from the
12 (Speaks in Spanish: "columpio" (meaning: Swings), from
13 the monkey bars parks, and car accidents.

14 I'll never forget one car accident -- I
15 don't like to tell because it impressed me the way the
16 baby died, but it was a car accident. Saturday and Sunday
17 was the worst day for me for 16 years because the accident
18 happened on the weekend. So -- and notice that you have
19 seen here children in the back of truck, and they fell.
20 Sometimes it kills three or four children. You can
21 imagine in the emergency room, but not on the autopsy
22 room. In the emergency room.

23 Q Now, when those children fall like that, do you
24 usually see abrasions on the hands, on the knees, or the
25 elbows?

1 A It depends how they turn over. It was just like
2 one from Mike Tyson. But this is different. This is --
3 this is an abused child. There's no way. I am not
4 denying that. I would be very unloyal to my profession,
5 to the jury and to the judge to start lying. No, because
6 they have different ages, different ages. It doesn't
7 happen. And the Doctor said that the fracture didn't --
8 so we're talking about the head injury itself. That's my
9 role. And this isn't a blunt accident. So he fell from
10 the left side, he have hemorrhage on the right. Well,
11 when he hit the head like that, like that, like that, like
12 that, continuously, I've never seen that. Probably, the
13 hand would hurt more than that, than a hammer.

14 Q Have you had an opportunity to view the area of
15 where the child allegedly fell?

16 A I'm sorry?

17 Q Have you had an opportunity to see where the
18 child allegedly fell? Have you seen the area, the steps
19 or the stairs?

20 A Allegedly fell?

21 Q Yeah. There are allegations by the defense that
22 the child fell down some steps. Have you, yourself, seen
23 those steps to try to verify whether these injuries would
24 be associated with a falling down the steps?

25 A No. I'm not a detective. I have never seen the

1 information, the medical information. I am not going to
2 see -- even if I see the stairs, how could I say where it
3 happened? No. This is -- this is a simple case.
4 Medically, acute brain injury, severe brain injury to kill
5 the baby.

6 Q Would you classify the bruising on the child to
7 be severe -- being caused by severe trauma?

8 A Sure.

9 Q The bite marks to the child's back, that would
10 be a severe injury, would it not?

11 A I'm sorry, I have difficulty hearing.

12 MR. PADILLA: May I approach?

13 THE WITNESS: Can you tell me again? I'm
14 sorry.

15 Q (By Mr. Padilla) Well, my question is very
16 simple. You said that the severe, blunt force trauma to
17 the head. I was asking you about the biting in general.
18 You would agree with me, would you not, sir, that this
19 child shows signs of severe physical trauma?

20 A Yes.

21 Q And that the bite marks would also be consistent
22 with severe trauma to the upper right shoulder, correct?

23 A The bite?

24 Q Yes.

25 A It's not a kiss. It's not -- it's not

1 manifestation of love. This is a trauma. It is sad to
2 see that. It is sad to see that.

3 Q Doctor, you were retained by the defense, right,
4 to testify here today? By Mr. Gilman, you were retained
5 by him?

6 A Yes, sir.

7 Q And what amount of money or fees, if any, are
8 you being paid for your testimony here today?

9 A That's the only thing I haven't discussed with
10 him. You will believe me, but I -- that is the only thing
11 I haven't discussed with him. He said that he was going
12 to send me \$2,500.

13 Q Are there any additional fees that you are going
14 to be charging Mr. Gilman?

15 A What?

16 Q Is that the extent of your --

17 A To review the case, talk to him and study and
18 suffer these hours in this area, that is the only thing.

19 Q Okay. Are you charging for the length of time
20 that you are testifying to here today?

21 A I don't think so. I think that the way I
22 understand this, it is more the kind of government who
23 pays the thing. I don't know. But if it was the
24 government then I wouldn't charge, because it's more.
25 Usually, I charge more just for the presentation here.

1 But if it's judicial, we have a limit as to the amount of
2 money.

3 Q Cameron County is paying you, correct?

4 A Huh?

5 Q Cameron County is paying you?

6 A I understand that it is the judicial system,
7 because for two reasons. First, it's not fair. I work
8 the year voluntarily, in the clinic every Monday. That's
9 like about \$600 a day for six years, every Monday. So I
10 didn't charge a penny. But one thing is important because
11 autopsy is what made me be a doctor. And when I see the
12 judicial system, the only one who does autopsies in the
13 Rio Grande Valley -- and we are learning. And this is
14 justice and fair because of the order of the autopsy that
15 the judges should respect. Because otherwise, there
16 wouldn't be an autopsy.

17 There is a kind of -- autopsy was my
18 teacher, and I have respect to them. That is the way I
19 was trained in the old times. We didn't have anything.

20 THE COURT: Anything else, Mr. Padilla?

21 MR. PADILLA: One more question, Your
22 Honor. The -- I will pass the witness, Your Honor.

23 THE COURT: Mr. Gilman?

24

25

REDIRECT EXAMINATION

BY MR. GILMAN:

Q Dr. Kuri, you are part of the American College of Forensic Examiners, are you not?

A I am not -- I have some diploma, but I didn't use it. I don't want to be "point one percent" considered in forensic. I tried to study more for my practice in my field of neurosurgery. So that -- but I brought this paper to show that I am talking as a neurosurgeon, with experience in neuropathology. And when I took the paper I filled the curriculum, and everything. I felt like a pen without ink. So that means nothing. What I have here is here, in my brain.

Q And you are part of the American Board of Forensic Medicine, also?

A Yes.

Q I realize that you don't want to --

A No. That's just a paper.

Q These are marked and are put into evidence.

A These are marked.

MR. GILMAN: And we would submit them.

THE COURT: Yes, sir. They're admitted into evidence.

THE WITNESS: This is the first time that I use it since I've talked to you.

1 Q These are in evidence now, sir. Okay?

2 A Okay. But -- it's nothing.

3 Q Okay. What is the big difference between
4 pathology and what you do?

5 A Well, what I do, I work in the pathology. Brain
6 tumor is pathology. Blood clot is pathology. "Patho"
7 means disease and "logy" is the Greek term of pathology.
8 What we are facing here is autopsy. The necropsy, that is
9 what we call the word necropsy autopsy, is when they are
10 dead, and they remove everything.

11 But what I do, for instance, supposedly
12 like you saw here, the whole brain, they open the scalp
13 this way and expose the scalp. In the old times, before
14 we cut the skin, I didn't see the injury, and this type of
15 incision, we did it in life. We took the scalp and
16 removed bone -- the big part of the bone out, the other
17 part of the bone out, to open the dura to let the brain
18 expand. And the bone, the flap of bone, where do we keep
19 it? We did an incision here and under the skin because
20 steady and suture. So when the brain was reduced, we put
21 the bone back again. So it's like a partial autopsy. It
22 was depressive to see -- to do it -- I did it on children
23 because they expand very fast. The edema -- that part of
24 body I preserved it. But I removed this part totally and
25 this part totally. And then open the dura like here, and

1 to let the brain expand like that here. See right here,
2 you open and then this swollen thing expand to give
3 room -- because of the lack of room that kills the
4 patient. The brain tries to go out and do pressure like
5 he said here in the peduncle. And also he said
6 microscopically, petechia. There is more hemorrhaging in
7 the brainstem. That's the cause of death.

8 Q And your testimony here today is, again, only
9 from the pathology report that I gave you and the
10 deposition of Dr. Farley that I gave you?

11 A And the pictures.

12 Q And the pictures. And your testimony,
13 basically, is that the falling down the stairs is
14 consistent with -- just as consistent with the cause of
15 death of this child as what the State is trying to suggest
16 as the beating?

17 A Well, we received a patient -- a body that have
18 a severe head injury. It was not caused by a simple
19 force. It was caused by a serious force. So what type of
20 serious force? But she -- the mother hit her against the
21 wall or somebody else? I am not saying the mother. But
22 any person that would have caused her, okay, or fell,
23 that's trauma. See? There's trauma on the head. What
24 produced it? I don't know. I don't think -- in the head,
25 it is specific. There is no doubt that she died because

1 of the hemorrhage that was produced by the trauma. Now,
2 if you ask me the question: Which would be the type of
3 trauma? So, if she fell from the stairs and rolling, if
4 that's how she died? That could be one. Hitting against
5 the board? Yes. Hit by a strong force? Too. It could
6 be.

7 MR. GILMAN: Okay. Nothing further, Judge.

8 Q One question, Doctor. You are not testifying
9 that this child died as a result of falling down the
10 stairs, are you?

11 A I'm sorry?

12 Q You are not testifying here today that this
13 child died because she fell down a set of stairs, are you?

14 A I don't know exactly what hit her, but the fall
15 of the stairs is -- in a child, is serious. It's a
16 serious trauma, and maybe your paper mentioned that it was
17 one of the causes, fell from the second floor. Sometimes
18 they leave the door -- the door opened unfortunately, when
19 they come back, the mother, the baby is on the floor dead
20 or injured.

21 Q And you saw the report that only 2.4 children
22 die out of 100 as a result of that fall?

23 MR. GILMAN: Objection, Judge. He's
24 quoting from -- again, from a report that is not in
25 evidence.

1 THE COURT: I understand. I'm going to go
2 ahead and overrule the objection. Go ahead.

3 MR. GILMAN: Note my exception.

4 THE COURT: I'll note your exception.
5 Let's wind it up.

6 Q (By Mr. Padilla) Doctor, again, the report
7 indicated that only 2.4 children of 100 -- or the average
8 of 2.4 out of 100 died as a result of a fall more than
9 15 feet. You yourself don't have sufficient knowledge
10 concerning the falls of children, correct, to contradict
11 that?

12 A I didn't question -- in a very nice way to use
13 of the English, you put me in a situation, you know --
14 (laughing)

15 Q Doctor, I will make it simple.

16 A If somebody makes a study after the CAT scan in
17 '75 -- and before '75 -- the CAT scan was done in three
18 minutes. In the old time, 30 minutes to make a better
19 hole just to see a hemorrhage. Just the exploration took
20 me two or three hours. So if somebody made a study, the
21 early diagnosis -- they go to the emergency room and
22 immediately do the CAT scan, and see the hemorrhage, and
23 it operates exactly, how can you compare the study from
24 the last ten years with advanced respiratory therapy,
25 blood, expansion, and keeping the temperature right, hyper

1 oxygenation and everything else to reduce the edema, where
2 40 years ago we didn't have studies? There are study who
3 has a group of people, who have selected a part -- and it
4 must be a good article to be written up -- but it doesn't
5 say anything there talking about the experience. But less
6 people have died since we have had the CAT scan. When I
7 go -- right now when they call me from the emergency room,
8 the doctor call me when I have a head injury, when I go
9 there, they already have the CAT scan. Twenty-two people
10 see -- or 20 people see --

11 Q Is it your testimony, Doctor, that if this child
12 had been taken to the hospital to be treated after the
13 injury, they could have used a CAT scan and you could have
14 saved this child?

15 A Well, that is the reason to be -- save the
16 child? I don't know. But if the patient is fatal, and is
17 immediately taken to the hospital has a better chance
18 because there is no swelling. You can do an operation and
19 remove the blood clot. So, he has a better chance. But
20 it is like breast cancer. The early diagnosis is the
21 right one. So if everything done, like when they do the
22 colonoscopy. It's done early. You look for the early
23 diagnosis, before you reach the symptom of nothing.

24 Q You will agree, Doctor, that if the child had
25 been taken for medical treatment, there is a better chance

1 for her surviving rather than letting her die then. Is
2 that correct?

3 A Well, of course. That is -- there is no way to
4 deny that the patient -- any person who is in -- anybody
5 that has any kind of infection, cancer, heart attack,
6 everything has to do with time. I wish my patients would
7 come when they have symptoms before having severe problem.

8 MR. PADILLA: Pass the witness.

9 THE COURT: Mr. Gilman, anything further?

10 MR. GILMAN: Nothing further.

11 THE COURT: May this witness be excused?

12 MR. GILMAN: Yes, Your Honor.

13 THE COURT: Dr. Kuri, thank you very much.

14 You may be excused, sir.

15 (Witness excused at 12:00 p.m.)

16 THE COURT: We will break for lunch now.

17 Be back to start up at 1:30.

18 (Lunch recess taken.)

19 **(Jury not present.)**

20 THE COURT: State of Texas versus Melissa
21 Elizabeth Lucio. Let the record reflect that the
22 defendant is present along with defense counsel.

23 Mr. Gilman, you said before proceeding
24 further you wanted to take up some legal matters.

25 MR. GILMAN: Yes, sir. I don't know if the

1 Court is aware, but during the testimony this morning,
2 there were facial remarks of Your Honor during the
3 testimony. And those facial remarks conveyed things, even
4 though maybe you had no intentions of conveying things to
5 the jury, and I just am bringing this to the Court's
6 attention because I would like the Court to try and
7 refrain from making any facial gestures during the time of
8 the testimony. If the Court is pleased or humorous of
9 something that somebody might have said, I wish the Court
10 would take that up after the jury is out.

11 THE COURT: I made no conscious facial
12 remarks for any specific purpose. But I will try and
13 refrain from reacting in any way, either positively or
14 negatively, as I have in the past. And any time counsel
15 wants to make a standing bill on any of this, you are more
16 than welcome to.

17 MR. GILMAN: Like I said, I don't know if
18 the Court is aware that the Court is doing it. But I am
19 bringing it to the Court's attention.

20 THE COURT: I was not.

21 MR. GILMAN: That's all I have, Your Honor.

22 THE COURT: Anything else?

23 MR. PADILLA: Your Honor, from my personal
24 knowledge, I was not aware of any facial gestures. I will
25 rely on Mr. Gilman's representations.

1 THE COURT: Bring the jury in.

2 THE BAILIFF: All rise for the jury.

3 (Jury enters at 1:27 p.m.)

4 THE COURT: You may be seated. Thank you
5 very much. Mr. Gilman, who is your next witness?

6 MR. GILMAN: We call Sonia Chavez.

7 THE COURT: Sonia Chavez, will you please
8 stand and raise your right hand.

9 (Witness sworn)

10 THE WITNESS: Yes, sir.

11 THE COURT: Please be seated.

12 MR. GILMAN: May I proceed?

13 THE COURT: Yes, sir.

14 **SONIA V. CHAVEZ,**

15 having been first duly sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 **BY MR. GILMAN:**

18 Q Would you please state your name for the jury,
19 please, ma'am?

20 A Sonia Valencia Chavez.

21 Q Ms. Chavez, are you a resident of Harlingen,
22 Cameron County, Texas?

23 A Yes, sir.

24 Q And do you know Melissa Lucio seated here to my
25 far right?

1 A Yes, sir.

2 Q Are you related to her?

3 A Yes, sir.

4 Q And what is that relationship?

5 A She's my sister.

6 Q And is she your older sister?

7 A She's my oldest sister, yes, sir.

8 Q And do you have -- have you had occasion to be
9 with your sister in the past, you meaning your family and
10 her family?

11 A Yes.

12 Q And can you tell this jury the relationship that
13 you've observed your sister having with her family? Is
14 that a good relationship or a bad relationship?

15 A It was a bad relationship.

16 Q Could you describe how your sister would
17 interact with her children?

18 A She never disciplined her children. I can
19 recall numerous occasions, as my daughter was growing up
20 with her older children, that her children were very
21 aggressive towards my daughter. And Melissa, she never
22 disciplined her kids. And she just would state: Behave,
23 Johnny. Sit down, Daniella. I am going to spank you.
24 Her kids would always hit my daughter. They would push
25 her. They would shove her.

1 And sometimes I would get aggressive
2 towards my daughter because Melissa wouldn't. I -- I
3 would get upset because she wouldn't discipline her kids.
4 So, I guess, I would take it out on my daughter. And I
5 would spank my daughter to see if Melissa would snap and
6 say, okay, I need to discipline my kids.

7 But she never would. She never did. And I
8 would spank my daughter. And she would never. She never
9 disciplined her kids. Just say: Behave, sit down, I'm
10 going to spank. She never did. They were just words.
11 And that was upsetting because my daughter was getting
12 hit. She was getting shoved, and she was getting pushed.
13 And she wouldn't do anything. She wouldn't do anything.
14 She would just tell them: Sit down. Behave. Don't do
15 that. She never disciplined them.

16 Q Did this lack of discipline on Melissa's part
17 lead you to not have very many family gatherings including
18 with Melissa's family?

19 A Yes, it did. It did.

20 Q As a child growing up, Melissa was the oldest?

21 A Melissa was the oldest.

22 Q And did you have any other sisters?

23 A I have a younger sister.

24 Q And did you and Melissa ever fight as kids
25 growing up?

1 A Yes, we did. But, once again, I -- I would push
2 Melissa. I would shove Melissa. I would bite Melissa. I
3 would pull her hair. She never shoved back. She never
4 pulled my hair. My youngest sister would defend her. I
5 would grab whatever, a shoe, and I'd smack her on the
6 head. And she never hit me. Diana, my sister, was the
7 one that would intervene to protect her. She was the
8 oldest. She would never hit us. She never fought with
9 us. We argued a lot. We fought over the phone. We
10 fought -- like for -- belongings. But Melissa never
11 physically hit us.

12 Q Have you ever known your sister to be an
13 aggressive type of person?

14 A Never.

15 Q Now, there was testimony here earlier about a
16 telephone conversation that Melissa had with one of her
17 sisters. Was that sister you?

18 A Yes, sir.

19 Q Right after she was taken by the police
20 department?

21 A Yes, sir.

22 Q Do you remember or can you tell this jury what
23 you remember of that conversation on the telephone?

24 A I remember Melissa called. She said she was on
25 her way. They were taking her to Olimito. She was going

1 to -- they were taking her to a dentist, her and Robert,
2 and that at this moment that the police was going to both
3 residences where she lived and where she previously had
4 moved from, and that they were looking for blood. And she
5 said: They are not going to find any blood. And I said:
6 What happened? And she said: I don't know, Sonia. I
7 don't know what happened.

8 She's like: I would spank the kids. And I
9 went: No, Melissa, you would never spank the kids. She's
10 like: Yes, I would spank them. And I'm like: No, you
11 never spank the kids. She never spank the kids. She's
12 like: Yes, Sonia. At the end, I would spank the kids.
13 No. She's like no -- I said: No, she never spanked the
14 kids. And then she said: They are trying to charge me,
15 but Robert would never spank the kids. That was --

16 Q And that was your conversation?

17 A Excuse me?

18 Q And that was your conversation?

19 A That was our conversation.

20 Q You don't ever remember ever saying -- or
21 Melissa saying: It wasn't Robert that did it, it was me
22 that did it?

23 A No, sir.

24 Q That was never said?

25 A That was never said. No, sir.

1 Q I have here what is marked as Defendant's
2 Exhibit No. 6. Do you recognize that?

3 A Yes.

4 Q And here's Defendant's Exhibit No. 7. Do you
5 recognize that?

6 A Yes.

7 Q And here is eight. Do you recognize that?

8 A Yes.

9 Q Here is Defendant's Exhibit 9. Do you recognize
10 that?

11 A Yes, sir.

12 Q Here's ten. Do you recognize that?

13 A Yes.

14 Q And here's 11. Do you recognize that?

15 A Yes, sir.

16 Q And 12, do you recognize that?

17 A Yes.

18 Q Are these photos that you were able to gather
19 and accumulate for me at my request?

20 A Yes, sir.

21 MR. PADILLA: (Reviews).

22 MR. GILMAN: I would like to introduce
23 these into evidence, Judge, as 6 through 12.

24 MR. PADILLA: No objections.

25 THE COURT: Pardon me?

1 MR. PADILLA: No objections, Your Honor.

2 THE COURT: Eight through 12?

3 MR. GILMAN: Six through 12.

4 THE COURT: Six though 12? I'm sorry.

5 **(Defendant's Exhibits 6-12 admitted)**

6 Q (By Mr. Gilman) And what is six?

7 A That's Melissa with my grandma.

8 Q Okay. And seven?

9 A That's my dad with Melissa.

10 Q And eight?

11 A That's at Melissa's wedding date.

12 Q When she married Mr. Lucio?

13 A Yes.

14 Q And nine?

15 A That's my grandmother and Melissa.

16 Q And ten?

17 A Those are my grandparents and Melissa, my
18 sister, dad and myself and my brother and cousin.

19 Q Okay. And 11?

20 A That's Melissa, dad and myself.

21 Q The three of you sisters?

22 A The three of us, uh-huh.

23 Q Okay. And 12?

24 A That's Melissa.

25 Q As a little girl?

1 A She was a year old.

2 MR. GILMAN: May I publish these to the
3 jury?

4 THE COURT: Yes, sir.

5 MR. GILMAN: I pass the witness, Your
6 Honor.

7 THE COURT: Mr. Padilla?

8 **CROSS-EXAMINATION**

9 **BY MR. PADILLA:**

10 Q Ms. Chavez, I will be asking you certain
11 questions. Sometimes I mumble. If you don't understand
12 the question, please let me know so I can rephrase it, and
13 I will try to make it a little bit clearer, okay?

14 A Yes, sir.

15 Q Now, you have not provided a registration with
16 the police between law enforcement agency concerning what
17 you testified to today; is that correct?

18 A Correct.

19 Q Okay. And you testified that your sister would
20 not discipline the children, correct?

21 A Correct.

22 Q Let me ask you. Were you familiar with Mariah
23 Alvarez?

24 A No, sir.

25 Q Okay. And Mariah Alvarez was removed from your

1 sister, correct? Did you know about that?

2 A Correct. Yes, sir.

3 Q And the child -- do you recall when the child
4 was returned to your sister?

5 A Yes, sir.

6 Q When was that?

7 A November of 2006.

8 Q And from November of 2006 to February of 2007,
9 did you have an opportunity to see the child Mariah
10 Alvarez?

11 A Yes, sir.

12 Q On how many occasions?

13 A I saw her on three occasions.

14 Q And what were the dates, ma'am?

15 A It was Thanksgiving. I don't know the exact
16 date, but it was Thanksgiving of 2006.

17 Q Uh-huh.

18 A It was 2006, December of 2006, and New Year's
19 Day on 2007.

20 Q Okay. And what was the condition of the child
21 when you saw her on those three occasions?

22 A She looked healthy.

23 MR. PADILLA: May I approach the witness,
24 Your Honor?

25 THE COURT: Yes, sir.

1 Q (By Mr. Padilla) Is the Mariah Alvarez, who's
2 here, the same child we're talking about?

3 A No.

4 Q That's not her?

5 A (Shaking head in the negative form).

6 Q Okay.

7 A Excuse me?

8 Q Is that Mariah Alvarez? Let me give you a
9 better picture, ma'am. I will show you Defendant's
10 Exhibit No. 30. Is that Mariah Alvarez?

11 A Yes.

12 Q Okay. When you saw the child, ma'am, back in
13 November, December and January, did you see all of the
14 bruising and all the markings on this child?

15 A No, sir.

16 Q Okay. How was the child dressed when you saw
17 her?

18 A Excuse me?

19 Q How was the child dressed when you saw her? How
20 was the child dressed?

21 A Dressed?

22 Q Yes.

23 A It was cold. She was wearing pants, a shirt --

24 Q Okay.

25 A -- a jacket.

1 Q And what was the child's demeanor?

2 A What was her what?

3 Q How was she acting?

4 A She was quiet and --

5 Q Okay.

6 A As I remember Thanksgiving, there's a bedroom in
7 my mom's room that we usually put video games if it was
8 cold or it was raining. And we put the Nintendo and
9 that's where we put the kids to play. And I remember
10 Mariah, Sara and Adriana in that room with the other boys
11 and my son. And the boys liked to wrestle a lot.

12 Q Okay.

13 A They would hit each other, punch each other. I
14 recall that time there was a lot of racket in that room.

15 Q Let me ask you this. Did you ever see the boys
16 strike Mariah? Did you see them strike Mariah?

17 A No, I didn't.

18 Q Okay. Did Mariah ever complain to you or to
19 Mrs. Lucio that she had been struck by her brothers?

20 A No.

21 Q Okay. Did the child ever come out of that room
22 crying saying that she had been assaulted, injured or
23 anything happened to her?

24 A Can I get back to what I was saying?

25 Q No, no. I'm asking you a question. Did the

1 child ever come to you and tell you or complain that she
2 had been assaulted, hit or injured?

3 A No.

4 Q Okay. And in December then -- more or less what
5 part of December did you have contact with the child?

6 A Like the second week of December.

7 Q And where did you have contact with the child?

8 A At my mother's house.

9 Q Again, at that point what did the child look
10 like?

11 A She looked okay.

12 Q She looked okay? Okay. Again, at that time did
13 the child complain to you about any pain or anything that
14 was going on with her?

15 A No. She's two.

16 Q Okay. Well, did you see any kind of bruising
17 or markings on the child that would indicate that maybe
18 the child was being abused?

19 A No.

20 Q Okay. Did you discuss at all -- have any
21 conversation with your sister Melissa concerning the
22 child, Mariah Alvarez?

23 A No.

24 Q Did you know her to be a child that misbehaved?

25 A No.

1 Q Did your sister at any time express frustration
2 with the child Mariah Alvarez?

3 A No.

4 Q Okay. So in January you say you met again on
5 New Year's Eve?

6 A New Year's Day.

7 Q New Year's Day. Okay. What was the condition
8 of Mariah Alvarez then?

9 A She was asleep.

10 Q Okay. And where was she asleep at?

11 A On the sofa.

12 Q At whose house?

13 A At my mother's house.

14 Q Okay. Again, did the child make any
15 conversations with you or to anybody that you know of?

16 A No.

17 Q Did you see any bruises on the child?

18 A No. She was asleep.

19 Q I mean, how close did you get to the child,
20 ma'am?

21 A She was in the dining room sofa and I was in the
22 kitchen.

23 Q She was asleep the whole time that you were
24 there?

25 A Yes.

1 Q How long a period of time were you there?

2 A I wasn't there for more than hour. Less than an
3 hour.

4 Q Well, how was the child dressed like?

5 A She was wearing pants and a blouse.

6 Q So it's your testimony that all of this time you
7 never saw any signs of physical abuse of the child,
8 correct?

9 A Correct.

10 Q Okay. Now, getting back to the conversation
11 that you had concerning Mrs. Lucio's statement to you, I
12 mean, did you know at the time -- or do you know that by
13 that time, she had already confessed to causing all of the
14 injuries to the child when she called you?

15 A I saw it in the news. I am trying to frame
16 time.

17 Q Well, you know, you're alleging that she told
18 you something to the effect that: All I did was spank the
19 child, and Robert spanked the child, too.

20 A The children.

21 Q The children. Okay. Well --

22 MR. PADILLA: May I approach again, Your
23 Honor?

24 THE COURT: Yes.

25 Q (By Mr. Padilla) You would agree, would you not,

1 ma'am that looking at pictures numbers 31 and 32 and
2 number 24 shows a lot more than just spanking, would it
3 not?

4 A It does.

5 Q So when she called you -- as you testified --
6 she told you that all she did was spank the child. But
7 the evidence in those pictures doesn't reflect that, does
8 it?

9 A No.

10 Q It's a lot more than spanking, isn't it?

11 A Yes.

12 Q It sure as heck looks like child abuse, does it
13 not?

14 A Yes.

15 Q Okay. After Mrs. Lucio was arrested, when did
16 you have contact with her next?

17 A I think on Monday.

18 Q On the Monday after?

19 A The Monday after.

20 Q At any time did you feel maybe compelled to go
21 down to the police department and give them a statement
22 concerning what you allegedly heard your sister telling
23 you?

24 A No.

25 Q Why not?

1 A I don't know.

2 Q Well, I mean, you knew she had been charged with
3 murder -- capital murder, correct?

4 A Correct.

5 Q You never took it upon yourself at that time to
6 say: You know what, I need to call the police, I need to
7 tell somebody of what my sister told me, did you?

8 A No.

9 Q Why not?

10 A I don't know. It just didn't cross my mind.
11 That was --

12 Q I mean, you had evidence, did you not, at that
13 point that your sister was merely alleging that she had
14 spanked the child? You didn't think that was important to
15 call the police?

16 A Well, she did make a phone call. So I'm
17 assuming you record everything.

18 Q We are not assuming anything, ma'am. I'm asking
19 what you did in relation to that phone call, okay? You
20 had information that allegedly, you know, she had only
21 stated that she had spanked the child only, but you didn't
22 think that was important enough to go to the police
23 department and discuss that with them?

24 A I don't know the law. Whatever statements she
25 made, I don't know what she stated or what happened.

1 Q Well, did she confess to beating up the child?

2 A She didn't confess to beating up the child.

3 Q She didn't?

4 A No.

5 Q Have you seen the confession? Have you seen the
6 confession?

7 A Okay -- the phone call she made to me, she
8 didn't confess. She admitted to spanking the children.

9 Q Okay. So she didn't -- she didn't say something
10 to the effect: Well, I don't know why they are blaming
11 Robert, I am the one that did it?

12 A She didn't say: I did it. She said: I would
13 spank the kids.

14 Q But it's your testimony that she never did?

15 A She never spanked the kids.

16 Q Okay. Was she a loving mother?

17 A To me she was a loving mother.

18 Q Okay. Did Mrs. Lucio tell you that she would
19 pinch the child's private parts?

20 A No.

21 Q Did she ever tell you that she would strike the
22 child in the abdomen on numerous occasions?

23 A No.

24 Q Did she ever tell you about the bruises that
25 were inflicted on that child, that she had performed on

1 her?

2 A No.

3 Q Well, how close are you to your sister, ma'am?

4 A I'm very close to my sister.

5 Q You're very close to your sister?

6 A Yes.

7 Q Okay. You testified that Melissa had a bad
8 relationship with whom?

9 A With Robert.

10 Q With Robert? Okay. I mean, you are not
11 testifying here today that Robert inflicted those injuries
12 on the child, are you?

13 A I don't know who did.

14 Q Okay. And she wasn't -- you say she never
15 disciplined the children; is that correct?

16 A Correct.

17 Q You never saw her lay a hand on the children,
18 correct?

19 A Excuse me?

20 Q You never saw her lay a hand on the children?

21 A No.

22 Q Now, ma'am, isn't it true that the only reason
23 you are here to testify is in an effort to help your
24 sister, correct?

25 A No.

1 Q No? When is the first time that you spoke to
2 the defense attorneys in this case?

3 A November of 2007.

4 Q So it's your testimony under oath, ma'am, that
5 as of November of 2007 Mr. Gilman and Mr. Cordova were
6 representing the defendant Melissa Lucio?

7 A Can you repeat the question?

8 Q Yes, I can. Is it your testimony under oath
9 that as of November of 2007 Mrs. Lucio was being
10 represented by Mr. Gilman and also by Mr. Cordova?

11 A Correct.

12 Q Did you provide them a written statement?

13 A No.

14 Q Isn't it true, ma'am, the only reason that you
15 are here to testify today is you don't want to see your
16 sister convicted? Isn't it true?

17 A Yes.

18 MR. PADILLA: Pass the witness, Your Honor.

19 **REDIRECT EXAMINATION**

20 **BY MR. GILMAN:**

21 Q Ms. Chavez, have you seen the way Melissa's
22 children react with their other siblings and your
23 children?

24 A Yes.

25 Q Did they physically abuse one another?

1 A Yes, sir, they did.

2 Q Did they cause bumps and bruises to one another?

3 A Yes, sir, they did.

4 Q Have you been aware of the -- Melissa's children
5 bruising, the younger ones, the younger children?

6 A No, sir.

7 Q Did you ever see the results of some of that
8 physical play that the wrestling children would bring
9 about in the way of crying of the younger ones?

10 A Yes, sir.

11 Q Would they cry to their mother or cry to
12 somebody --

13 A Yes, sir.

14 Q -- about their older brother or sister hurting
15 them?

16 A Yes, sir.

17 Q Did that happen on more than one occasion in
18 front of you?

19 A All the time.

20 Q In those three times when you -- well, actually
21 two times that you saw Mariah, did you ever see Mariah
22 crying because of rough play that Melissa's other children
23 would bear upon her?

24 A Yes, sir.

25 Q Was that done in November or Thanksgiving and

1 then again in December?

2 A November.

3 Q November.

4 A Thanksgiving of 2006.

5 Q Okay. What would happen if you told Melissa to
6 discipline her children --

7 A She would yell --

8 Q -- or did you ever tell Melissa to discipline
9 her children?

10 A No. I thought it. I would get angry because
11 she wouldn't.

12 Q Would you say anything to her?

13 A I wouldn't say anything to her, but I'd show it
14 by being angry, by being angry at my daughter, by spanking
15 my daughter, by spanking my son when her kids would shove
16 and kick and punch my children.

17 Q In hopes that she would understand?

18 A In hopes that she would understand and
19 discipline her kids, to spank them and tell them: No,
20 that's not right, you shouldn't do that. She wouldn't.
21 She never did. She would not discipline. She never
22 disciplined. She yelled a lot, but she never disciplined.

23 MR. GILMAN: Pass the witness.

24

25

RECROSS-EXAMINATION

BY MR. PADILLA:

Q Ma'am, let me get something straight here. When did the child Mariah Alvarez complain to you about being assaulted?

A She didn't complain to me about being assaulted.

Q Okay. Well, you said you talked to her and that she had been the subject of rough play or whatever?

A I didn't say she talked to me.

Q Okay. Well, what, if anything, did you do, ma'am, to attempt to protect Mariah?

A I took her out of that room, sir.

Q You took her out of that room? Which room was that? Where all the --

A One of the bedrooms where -- yes, I took out the three little girls.

Q And at that point did you call the police department --

A No.

Q -- Child Protective Services or anybody else --

A No.

Q -- to intervene on behalf of the child?

A No.

Q Other than "taking them out of the room," what else, if anything, did you do in an effort to allegedly

1 protect these children?

2 A I intervened by telling them to stop fighting
3 the way they were fighting, to stop choking each other the
4 way they were choking each other.

5 Q It's not your testimony, ma'am, that those
6 injuries there that you are looking at in those pictures
7 in front of you were caused by the other children, is it?

8 A It's possible.

9 Q Very possible, huh?

10 A It's very possible.

11 Q Very possible. So if the defendant, your sister
12 testified that she did all of the injuries to her, with
13 the exception of a scratch on her face, and a foot, is it
14 also just as possible that Melissa Lucio is the person
15 that inflicted all of the injuries on that child?

16 A No.

17 Q That's not possible?

18 A (Shaking head in the negative form).

19 MR. PADILLA: May I approach, Your Honor?

20 Q (By Mr. Padilla) It's not possible?

21 A Not the way I know my sister.

22 Q Because she is your sister, is that why it is
23 not possible?

24 A No, because that's not who Melissa was. That's
25 not how Melissa would discipline her children.

1 Q Well, let me ask you this. You knew that
2 Melissa -- that Melissa's children went to school,
3 correct?

4 A Yes.

5 Q Okay. You also knew that the two oldest ones --
6 or the two youngest ones above Mariah were in half day
7 schools, correct?

8 A Yes.

9 Q Okay. And the children, to your knowledge,
10 would leave at 11:00 o'clock in the morning. Correct?

11 A Yes, sir.

12 Q And returned back about 2:30 or 3:30, correct?

13 A Yes, sir.

14 Q Okay. So who during the day would have more of
15 a one-to-one contact with this child than your sister?

16 A I don't know.

17 Q Well, did you ever visit her while she was there
18 with the child alone in the house?

19 A I worked.

20 Q You worked? Okay. So you didn't have any
21 contact with Mariah and Melissa when they were at their
22 house, correct?

23 A Correct.

24 Q You said that your sister is a very loving
25 person?

1 A Yes.

2 Q Would it surprise you to learn that when the
3 child died that she made no effort to attempt to
4 resuscitate this child?

5 A Would it surprise me?

6 Q Yes.

7 A No.

8 Q No? Okay. Would it surprise you that she never
9 made contact with EMS in an effort to ascertain or to
10 explain the child's condition to the EMS technicians?

11 A No.

12 Q Why wouldn't it surprise you?

13 A Because she loved her children.

14 Q Well, I mean, if you are not attempting to
15 resuscitate your child, is that an act of love?

16 A No.

17 Q If you are not in there trying to talk to the
18 EMS in an effort to revive the child, is that also an act
19 of love?

20 A No.

21 Q Admitting that you physically abused the child
22 almost on a daily basis, is that evidence of love to you?

23 A No.

24 Q So for those 88 days from November the 21st to
25 2006 to February 17 of 2007, you say you had contact with

1 the child Mariah Alvarez on three occasions, correct?

2 A Yes, sir.

3 Q And each one lasted what, less than an hour?

4 A No.

5 Q How long did it last, the first visit on
6 Thanksgiving?

7 A About five hours.

8 Q Okay. And the next one in December, how long
9 did that -- how long were you available to the child?

10 A About five hours.

11 Q And on New Year's Day?

12 A Less than an hour.

13 Q During the time that she was asleep, was that
14 the last visit?

15 A Yes, sir.

16 Q What was her physical condition at that time?
17 Did she look thin to you?

18 A I didn't give much attention to her.

19 Q How many children were in the house?

20 A Over ten.

21 Q When the child was laying there on the sofa, did
22 you see anybody come over and hit her?

23 A No.

24 Q Did Melissa ever complain to you about Mariah at
25 all?

1 A No.

2 Q Did she ever complain to you or did she ever
3 comment to you that she was overwhelmed of having nine or
4 ten children with her?

5 A No.

6 Q Did she ever tell you that the child, Mariah
7 Alvarez, was bruised and battered?

8 A No.

9 Q Do you think that you were -- was she close to
10 you or to your other sister?

11 A To me.

12 MR. PADILLA: Pass the witness, Your Honor.

13 THE COURT: Mr. Gilman.

14 MR. GILMAN: I don't have anything else of
15 this witness.

16 THE COURT: May this witness be excused?

17 MR. PADILLA: Yes, Your Honor.

18 MR. GILMAN: Yes, sir.

19 THE COURT: You may step down.

20 (Witness excused 2:02 p.m.)

21 Thank you. Call your next witness.

22 MR. GILMAN: I call Norma Villanueva.

23 We're going to need to set up, Your Honor, if the Court
24 will permit us.

25 THE COURT: Ladies and gentlemen of the

1 jury, I am going to ask you to take just a short break,
2 about five minutes before we set up.

3 THE BAILIFF: All rise for the jury.

4 **(Jury not present.)**

5 THE COURT: Can we take a break?

6 (Brief recess taken 2:04 p.m..)

7 MR. PADILLA: My understanding, Your Honor,
8 is that the defense is calling this witness for the
9 purpose of her to testify to the CPS records, Your Honor.
10 And I just need an idea of where we're going with this.

11 THE COURT: One of the jurors knows this
12 witness?

13 MR. PADILLA: The potential witness,
14 Mrs. Villanueva?

15 THE COURT: Mrs. Villanueva. Rolando
16 Gonzalez. I don't know to what extent.

17 MR. PADILLA: Judge, I would ask the Court
18 to do a proper evaluation and bring the juror in here and
19 ask him if that knowledge or relationship would affect his
20 opinion in this case one way or the other. And the State
21 will move that we excuse that juror.

22 THE COURT: Mr. Gilman?

23 MR. GILMAN: Yes, sir.

24 THE COURT: I need a response.

25 MR. GILMAN: I am getting to it, Judge. We

1 listed Norma Villanueva as one of our witnesses in the --
2 at the time of jury selection when we met downstairs.

3 MR. PADILLA: He didn't come forward,
4 Judge. He may recall right now. I assume they are going
5 to find out.

6 THE COURT: Okay. Let's put aside just for
7 a moment with regard to Mrs. Villanueva. The CPS records
8 are not in evidence.

9 MR. GILMAN: No.

10 THE COURT: Okay. Yet, CPS testified on
11 the State's case and none of the records came in as far as
12 I remember.

13 MR. PADILLA: Right.

14 THE COURT: So how is Mrs. Villanueva's
15 testimony with regard to something that is not in evidence
16 going to be relevant?

17 MR. GILMAN: I asked the CPS worker if she
18 had in her department turned over all of the records
19 dealing with Melissa Lucio and her children to me, and she
20 responded, yes.

21 THE COURT: I remember that.

22 MR. GILMAN: And I have all of the records
23 that the district attorney's office has turned over to me
24 dealing with Melissa Lucio. And I will put the two boxes
25 into evidence --

1 THE COURT: Okay.

2 MR. GILMAN: -- as copies of the records.
3 And then Mrs. Villanueva has reviewed all of those records
4 at my request and compiled those records. And she'll be
5 tying these records in -- dealing with my client.

6 There are certain psychologicals that were
7 brought out. There are certain things that were going on
8 with the children that were being brought out.

9 THE COURT: I can see that as part of the
10 punishment. But in this case we are talking about the
11 case in chief --

12 MR. GILMAN: Well --

13 THE COURT: -- and on the case in chief, I
14 am having a hard time understanding how you can get it in.

15 MR. GILMAN: Well, we have heard also
16 testimony from the Texas Ranger, that he could walk into a
17 room and could tell by "body language" that my client
18 wanted to make a statement. And Norma Villanueva is going
19 to be talking about the body language of Melissa during
20 her video statement. She's also going to be talking about
21 the -- what's happened to her and the authorities with
22 Child Protective Services and how that has a bearing on
23 Melissa Lucio.

24 THE COURT: And I understand that with
25 regard to punishment in terms of factors that are in

1 litigation, I am having a hard time understanding how it
2 affects the case in chief as to guilt or innocence.

3 MR. GILMAN: Judge, it goes to whether or
4 not she -- what type of personality she has. Is she an
5 aggressive person? Is she a nonaggressive person?
6 Whether or not she admits to things that she didn't do or
7 did do? Whether she says one thing to men, and another
8 thing to women? This is what she is going to be
9 testifying to.

10 MR. PADILLA: Judge, through all of the
11 evidence as to all the CPS records it contains hearsay on
12 top of hearsay. Secondly, I don't think that this witness
13 who has been identified is an expert in being able to
14 decide the body language or anything of that nature. She
15 has to prove herself as an expert. But what we're talking
16 about is evidence that might be admissible at the
17 punishment phase but not guilt/innocence.

18 THE COURT: My memory is Mrs. Villanueva
19 was a social worker.

20 MR. GILMAN: She's a social worker, but she
21 is also certified with CPS.

22 MR. PADILLA: Judge, again --

23 THE COURT: Hold on. How does that go as
24 to body language?

25 MR. GILMAN: Huh? Judge, she has seen the

1 video.

2 THE COURT: I understand.

3 MR. GILMAN: And she has reviewed the
4 records, and with that --

5 THE COURT: What kind of education and/or
6 training does she have to interpret that?

7 MR. GILMAN: The same amount --

8 THE COURT: Hold on. Just a minute. I'm
9 sorry. With regards to the factors of mitigation, I don't
10 think there is any question that Mrs. Villanueva is overly
11 qualified to testify as to that. With regards to the
12 issue of guilt or innocence, I am having a hard time
13 trying to figure that out. So I welcome any consideration
14 because I do not see how Mrs. Villanueva is going to talk
15 about things -- I mean, unless she has personal knowledge
16 of something with regards to the facts, how is she --

17 MR. GILMAN: She's going to be testifying
18 as an expert, Judge, as to the records that she received
19 and reviewed. Then she's going to be talking about --

20 THE COURT: Let's do one of these things at
21 a time. With regards to the records that she has received
22 and reviewed. First of all, they're not in evidence. d.
23 You have the CPS people here testifying and they were not
24 admitted, how are you going to prove them up?

25 MR. GILMAN: That they have been all turned

1 over to me and I have turned those over to my client, my
2 witness.

3 THE COURT: I understand that. But
4 somebody has got to testify to them being used in the
5 normal course of businesses or anything like that in order
6 for them --

7 MR. GILMAN: This is all of the records --
8 CPS turned over all the records that they allegedly had.
9 And if I had them, she can only testify to the records
10 that I gave her.

11 MR. PADILLA: Your Honor --

12 THE COURT: I'm listening. Mr. Padilla?

13 MR. PADILLA: Your Honor, you got hearsay
14 on top of hearsay. A lot of the therapists that made
15 records made direct reference on their notes, and it's
16 hearsay, Judge. Those people aren't here to testify, and
17 we can't cross examine them, and --

18 THE COURT: It's Crawford in reverse.

19 MR. PADILLA: Well, it's Crawford in
20 reverse, Judge. If they've going to offer them, they need
21 to offer them through the appropriate, and not through
22 Mrs. Villarreal -- with all due respect to her.

23 MR. KRIPPEL: And, it's also a chain of
24 custody problem, Your Honor. As soon as we turn those
25 over, any kind of manipulation can happen. When CPS

1 brings the records in, they are personally testifying: I
2 reviewed and compiled these set of records. Here they
3 are. They haven't been changed from when they are handing
4 them over, and when they are testifying as to their
5 authenticity. We have two breaks in the chain.

6 MR. GILMAN: Then you've got the same
7 question, if they've turned them over to the district
8 attorney's office: Where they manipulated or changed in
9 any way before they ever came to me. I mean at some point
10 we got to say --

11 THE COURT: Absolutely. And there is no
12 question as to that, Mr. Gilman. But I go back to the
13 original issue with regards to guilt or innocence. I
14 think with regards to mitigation, and you can talk about
15 all the circumstances that either take away or mitigate
16 more culpability, and that is a broad field.

17 With regards to guilt or innocence, I'm
18 having a hard time seeing how they come in on that part of
19 the case.

20 MR. CORDOVA: May I say one thing, Judge?

21 THE COURT: I'm listening.

22 MR. CORDOVA: Your Honor, in this case
23 everyone keeps referring to what statement my client made
24 as a confession. Well, we disagree that it's a
25 confession --

1 THE COURT: It's a statement.

2 MR. CORDOVA: -- it's a statement.

3 Mrs. Villanueva is here to testify as to why, in fact, she
4 would have given police officer's information in that
5 statement that was not correct, and she's going to base
6 that testimony on the information that she has seen from
7 the social --

8 THE COURT: And I think if you have an
9 expert that is a psychologist that deals with
10 statements -- that has done studies on that and has done
11 academic background on that, that may or may not be
12 appropriate.

13 MR. CORDOVA: I think she's qualified. If
14 the Court wants to ask her a couple of questions in that
15 regard, if I could go into her background and have a
16 Daubert hearing.

17 THE COURT: No, we'll hear the Daubert. I
18 am still having problems with the CPS records.

19 MR. CORDOVA: Yes, sir.

20 THE COURT: Your witness, Mr. Gilman.

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25

1 **NORMA VILLANUEVA,**
2 having been first duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 **BY MR. GILMAN:**

5 Q Would you state your name please for the record?

6 A Norma Villanueva.

7 Q And you were asked to be here. And what
8 preparation did you do in reference to your testimony here
9 today that brings you here?

10 A There were several layers of preparation. It
11 started off with meeting with y'all. I've met with the
12 defendant, members -- one or two members of the family,
13 reviewing CPS records, reviewing the statement, DVDs that
14 she made to the police, reviewing also the written
15 statement.

16 Q What is your educational background that gives
17 you -- that makes or shows your expertise in the area of
18 reviewing Child Protective Services records?

19 A Well, first of all, I have a master's degree in
20 social work. I also have a clinical license in the State
21 of Texas which allows me to do independent clinical
22 practice, which includes diagnosis of mental health
23 disorders and the treatment of mental health disorders. I
24 also have the highest national clinical license to allow
25 me to do diagnosis and treatment of mental health

1 disorders. I know clinical social workers are not common,
2 but there are some of us that do exist.

3 I also for approximately four years was the
4 permanency planning team convener for Child Protective
5 Services under their contract. And I was doing all of the
6 quality review across the Valley on cases that were
7 removals. And I had to go through training in order to
8 obtain that contracting and then to keep it. And I kept
9 it for four years.

10 Q And your -- did you -- have you received any
11 type of training that helps you in dealing with people and
12 what they are trying to convey by the way they act, by the
13 way they hold their body, by the way they move their arms
14 and hands?

15 A Yes, I have. That's part of mental health
16 clinical training, and that started at the master's degree
17 level and then every year we have to have continuing
18 education units. And in order to keep my clinical
19 license, I have to prove that I am doing clinical level
20 type of CEU'S. Continuing Education Units, excuse me.

21 Q And are you up-to-date with all of your
22 continuing education?

23 A Yes, I am. My license is in good standing.

24 Q Have you been able to determine the reactions of
25 Melissa Lucio to different people in their conversations

1 with her?

2 A Yes, I have.

3 Q Are you able to see the different reactions that
4 Melissa Lucio has with dealing with Child Protective
5 Services from the time they first started in 1995 up until
6 the present time?

7 A Yes, I have.

8 Q Have you been able to observe through the
9 records of Child Protective Services -- Child Protective
10 Services' interaction with Mrs. Lucio and her children
11 over the years, especially from '04 to the present?

12 A Several patterns of behavior have emerged, yes,
13 in reviewing the documents.

14 MR. GILMAN: Pass the witness, Judge.

15 THE COURT: Mr. Padilla?

16 **CROSS-EXAMINATION**

17 **BY MR. PADILLA:**

18 Q Mrs. Villanueva, can you -- what did you call
19 your specialized science in order to detect human thought
20 process through physical conduct?

21 A It is part of being a mental health clinician.
22 In part of our training we look at not just the
23 intrapsychic, but the inner personal issues also, and that
24 includes body law language.

25 Q Can you tell me one treatise or one book that I

1 can look at in an effort to identify this specialty?

2 A I'm not a specialist in that area. It is part
3 of my clinical training and --

4 Q If you are saying you are going to sit here and
5 give me an opinion of what somebody thinks --

6 A Uh-huh.

7 Q -- I want to know what forms the basis of that
8 thought process. Is it just what you think?

9 A What forms the basis of that thought process is
10 clinical training and clinical experience, as it would
11 with any other mental health professional, first of all.
12 Second of all, it's a combination of knowing life span
13 development theories, clinical theories and human behavior
14 social environment interaction theories.

15 Q Sounds good, ma'am. Again, give me a treatise
16 or give me a book or give me a manual that I can look at
17 to be able to understand what you're attempting to testify
18 to here today.

19 A There is no one manual that is widely accepted
20 in the mental health field. There are several manuals in
21 the law enforcement field, but not in the mental health
22 field. In the mental health field, the way we deal with
23 it is by combining, again, knowledge of human development
24 and life span development. That would be things like
25 Ericsson, Gibson, all of the different life spans

1 theories. And then you add to that your clinical
2 diagnostic training which includes body language as part
3 of that training.

4 Q So anybody who gets nursing training can receive
5 the same type of training, do they not?

6 A That is incorrect, sir.

7 Q Let me ask you this. Can you explain to me how
8 as you pertain to be an expert in this field -- are you
9 holding yourself out to be an expert?

10 A I'm a mental health expert, yes, sir.

11 Q Okay. And as you're testifying as a mental
12 health expert, you can sit there and look at a person and
13 just by the demeanor in the face or their body demeanor,
14 that person is either telling you the truth, or not
15 telling you the truth?

16 A Oh, no, sir, I didn't say that. What I'm
17 saying, is, that it has to be a combination of factors.
18 When you're judging somebody's behaviors, especially when
19 it has to do with body language, if you do it solely on
20 the basis -- for example, if all I had done was just watch
21 that videotape testimony, or excuse me, statement, then I
22 shouldn't be sitting up here.

23 But you interview the person. You look at
24 their background. You look at their interactions with
25 other figures of authority. You put the whole pool of

1 information together because you cannot know a person
2 based on watching one DVD, or as an investigator by having
3 them with you in that one instance, which is an instance
4 of duress. You have to look at them across a life span.

5 Q To be honest with you --

6 MR. GILMAN: Objection, Judge. She was not
7 allowed to finish her answer.

8 THE COURT: I'm going to overrule the
9 objection. I heard an end to the statement. Go ahead,
10 Mr. Padilla. But, do give her time.

11 MR. PADILLA: Yes, sir. I will give her
12 all the time she needs, Judge.

13 Q (By Mr. Padilla) You testified what you consider
14 to be some accepted principles in your field. And, again,
15 I know that you go back to the core, but how much training
16 have you received in trying to decipher body language,
17 specific course study for body language?

18 A Specific courses would include my clinical
19 sources in my master's degree, number one. Number two,
20 continuing education courses where I've been updating my
21 clinical knowledge. It's been included in different
22 courses. And that's for the past 20 years.

23 Q And is there a licensing or accreditation that
24 would make this science legitimate?

25 A Sir, there is no license specifically for the

1 interpretation of body language. It is included in our
2 clinical license.

3 Q So, I mean, is there any accreditation at all in
4 the field that you can tell me that you have received an
5 accreditation to do those specific functions of attempting
6 to decipher body language?

7 A That's included in my clinical license that I
8 have at both the highest state level and the highest
9 national level.

10 Q And that's just a clinical license, correct?
11 There are no subspecialties in that.

12 A That is very true, sir.

13 Q Now, what are the principles that you rely on in
14 attempting to draw yourself as an expert in the field?

15 A As an expert in the field of mental health, it
16 would include -- which includes the interpretation of body
17 language, you utilize first of all the clinical theories
18 for diagnosis. And then you look at also life span
19 development theories. You look at theories of traumas.
20 You look at theories also mixed in of how to interpret
21 people's actions.

22 It's -- if you look at the field of
23 clinical social work and psychology, you are going to see
24 that there's a wealth of literature that puts that inside
25 of the clinical field. If you are looking for an absolute

1 I went and got a piece of paper that gives me a board
2 certification in that, it doesn't exist. My board
3 certification is in the clinical mental health area.

4 Q Have you, yourself, ever written any treatises
5 or any papers concerning the field that you are here to
6 testify about?

7 A I have not authored, no.

8 Q And how much time did you estimate you spent
9 with Mrs. Lucio in reviewing the video tape?

10 A With Mrs. Lucio or reviewing the video tape?

11 Q How about both.

12 A Okay. The videotape was approximately five,
13 five and a half hours. Looking at the DVDs of her
14 statement with Mrs. Lucio, it's been seven to eight hours.

15 Q What does my body language tell you right now?

16 A I can't make a judgment based on just this one
17 happenstance. If you want to sit down with me, I will
18 give you a social history, time and everything.

19 Q I have sat down with you before.

20 A That's not a clinically appropriate question.

21 MR. PADILLA: I pass the witness.

22 THE COURT: Mr. Gilman.

23 MR. GILMAN: Nothing further, Judge. We're
24 ready for testimony.

25 THE COURT: With all due respect to

1 Mrs. Villanueva, I think she is not qualified on the issue
2 of mitigation. I do not find her to be an expert on
3 whether or not the statement was true or not true,
4 manufactured -- factored, or whatever. I don't find that
5 she has particular expertise in that area.

6 MR. GILMAN: Judge, the State brings in a
7 Texas Ranger and he says: Well, body language tells me
8 this. And, body language tells me that. What expertise
9 did he have, if any?

10 MR. PADILLA: He could have asked him that,
11 Your Honor. He was there on the witness stand and was
12 subject to cross examination.

13 Additionally, Your Honor, we would ask that
14 that evidence that has been entered --

15 THE COURT: Hold on a minute. There is a
16 statement that he explained how he approached his
17 eliciting of that statement. He explained how he
18 interpreted it in order to solicit that statement. The
19 statement is a byproduct of that.

20 What you are asking to do is to give
21 evidence from a person holding themselves out as an expert
22 as to why that statement is or is not true or what was
23 produced. Again, I think, Mrs. Villanueva, is imminently
24 qualified on the issue of mitigation. But, you know, I am
25 familiar with clinical social workers.

1 THE WITNESS: Uh-huh.

2 THE COURT: I've got a "comadre" who is a
3 social worker, but I don't find her to be an expert in
4 that area. I'm having problems with the CPS records, too.
5 I think that they are imminent -- I think that they are
6 within the ambient of mitigation, and I think they can be
7 talked about, and the events that they talked about, but
8 in the ambient of guilt or innocence, the fact as to
9 whether or not this did or did not happen, I don't see
10 them being relevant unless you've got something right on
11 point.

12 We're looking at the death of Mariah
13 Alvarez and what did or did not cause it, and she's
14 accused of it. So anything that reflects to that, one way
15 or the other, I think, it should come in.

16 MR. GILMAN: All of the CPS records pertain
17 to that, Judge, because it leads up to that point. And
18 then subsequent thereto is important because it is dealing
19 with the child, the CPS, a state agency dealing with this
20 lady both before and after, and their knowledge, or lack
21 thereof.

22 THE COURT: The thing is, if we had the CPS
23 workers here.

24 MR. GILMAN: Judge, they bring in --
25 they're like in federal court. I don't know if you

1 remember going to federal court on a pretrial hearing.
2 All they do is they put the most ignorant person on the
3 witness stand and then you have to ask them questions and
4 they know nothing, absolutely nothing. This lady didn't
5 come to work for CPS until after Mariah was dead.

6 THE COURT: Mr. Gilman, you could have
7 subpoenaed her.

8 MR. GILMAN: Judge, I --

9 THE COURT: You could have subpoenaed her
10 Isn't that true?

11 MR. GILMAN: She is not released yet. I
12 will call her back. We will wait for her to get over here
13 and I will put it all into evidence.

14 THE COURT: Very well. Call her back.

15 MR. GILMAN: Okay. I will call her back.

16 MR. PADILLA: What was her name?

17 THE COURT: I'm sorry?

18 MR. GILMAN: Joanne Estrada.

19 THE COURT: Who is here from CPS?

20 MR. PADILLA: The attorney.

21 THE COURT: Call Joanne Estrada, please,
22 and have her come in.

23 I'm sorry, Madame. Would you identify your
24 name for the record?

25 MS. EICHBERGER: Linda Eichberger.

1 THE REPORTER: I'm sorry. What's your
2 name?

3 MS. EICHBERGER: Linda Eichberger.

4 MR. KRIPPEL: Your Honor, just to bring it
5 to the Court's attention, or to refresh the Court's
6 memory, Mrs. Estrada is now represented by counsel. So
7 counsel has to be called, Mrs. Ann Nix.

8 MR. GILMAN: I don't see --

9 THE COURT: Mr. Krippel, again --

10 MR. KRIPPEL: -- I'm just bringing it to
11 the Court's attention.

12 THE COURT: Again -- I understand, but was
13 there not a transaction immunity document signed?

14 MR. KRIPPEL: I am just bringing it to the
15 Court's attention.

16 THE COURT: I am not going to worry about
17 it.

18 MR. KRIPPEL: I am just bringing it to the
19 Court's attention.

20 THE COURT: For what other purposes do you
21 want to call Mrs. Villanueva in the meantime?

22 MR. GILMAN: I will wait until
23 Mrs. Estrada --

24 THE COURT: Mrs. Villanueva, we will ask
25 you to step down, please.

1 THE WITNESS: Yes, sir.

2 THE COURT: Oh, just a minute. Did I ever
3 swear you in? I don't remember swearing you in. I think
4 we started with --

5 THE WITNESS: You're right. I didn't get
6 sworn in, sir.

7 THE COURT: Well, would you stand up --

8 THE WITNESS: Yes, sir.

9 THE COURT: -- and raise your right hand?
10 "Do you solemnly swear to -- not only to
11 tell the truth, but everything that you
12 have said heretofore and testified to, is
13 true and correct, so help you God?"

14 THE WITNESS: Yes, I do.

15 THE COURT: Thank you very much.

16 THE WITNESS: You're welcome. Do I still
17 step down?

18 THE COURT: Yes. The rule of the witnesses
19 has been invoked, Mrs. Villanueva.

20 Tell the jury, please, that we are waiting
21 on a witness to arrive. But that she has been called.
22 I'm going to take a short break while the other witness
23 gets here. I would like the attorneys to come back and
24 have a conference on this, if they think it's productive,
25 too.

1 (Witness excused and Recess from 2:32 p.m.
2 to 3:09 p.m..)

3 THE COURT: Okay. Mr. Gilman?

4 (Court & Jury not present.)

5 MR. GILMAN: Are you ready, Al?

6 THE REPORTER: Yes, sir.

7 MR. GILMAN: This is on a Bill of
8 Particulars.

9 NORMA VILLANUEVA,
10 having been first duly sworn, testified as follows:

11 BY MR. GILMAN:

12 Q State your name for the record, please.

13 A Norma Villanueva.

14 Q Okay. And you are an expert who I've asked to
15 come in and testify, and this is the guilt/innocence on
16 this particular case; is that correct?

17 A That is correct.

18 Q Okay. Can you tell the Court what your
19 credentials are to show your expertise?

20 A Yes. I am a licensed clinical social worker
21 licensed for private, clinical practice in the State of
22 Texas. I am a board certified diplomate in clinical
23 social worker of a national credential. I am also a board
24 certified forensic specialist, and that's a national
25 credential. I've had contracts which Child Protective

1 Services. And as part of those contracts, I've been
2 trained in their policies and procedures and their risk
3 management policies and their risk assessment instrument,
4 and also in how they do home studies, foster home studies,
5 and adoption home studies.

6 Q Okay.

7 A And I was their permanency planning team
8 convener for four years under contract.

9 Q All right. And if you are allowed to testify in
10 this particular case, you are going to testify as to what?

11 A I was going to testify about three separate
12 issues. The first issue was about patterns of behavior
13 with Mrs. Lucio which strongly influenced her behavior
14 during that videotaped statement process with the
15 investigators that night.

16 Q That video statement that is in evidence in this
17 case?

18 A That is correct. In support of that, I was also
19 going to testify that the patterns of behavior as seen in
20 the Child Protective Services records, the patterns in her
21 family, how that influenced her decision making and how
22 she felt with the different investigators, male and
23 female, and also how she makes her life decisions. It
24 influenced her behavior in that -- how she felt with the
25 different investigators male and female and how she made

1 her decisions in answering the questions during that
2 process. And lastly, looking at her CPS history, how --
3 and also her social history, how she deals with different
4 people in levels of authority, and also how that
5 influenced her body language, and how body language is
6 interpreted in different ways if you do not have her
7 history of behaviours or patterns of behavior or her
8 social history.

9 Q And the material that you had to base your
10 testimony on was Child Protective Services records that
11 were given to me as part of my discovery?

12 A That is correct.

13 Q And also, your interview with Melissa Lucio?

14 A That is correct.

15 Q And --

16 A And family members.

17 Q And family members. Anything else?

18 A Yes. I also reviewed the statement, the DVD
19 statement that she made to the police and her written
20 statement.

21 Q Okay. Thank you.

22 MR. GILMAN: We are going to offer a copy
23 of this.

24 **(Defendant's Exhibit Numbers 13-18 admitted**
25 **for Bill of Particulars No. 1 only)**

1 Q (By Mr. Gilman) Thirteen is your curriculum
2 vitae?

3 A Uh-huh.

4 Q Fourteen is what? This is a compilation --

5 A It's a compilation of the case synopsis done by
6 the case reader from Child Protective Services.

7 Q And 15?

8 A This is a synopsis of Lucio case 2004/2006.

9 Q This is Defendant's Exhibit No. 16?

10 A Compilation of service plan information
11 specifically about Melissa Lucio, the mother.

12 Q Seventeen?

13 A Compilation of service plan information on
14 Mariah Alvarez.

15 Q Eighteen?

16 A Compilation of Lucio cases multiple, for
17 2004/2006.

18 THE WITNESS: Anything else from me?

19 MR. GILMAN: No.

20 THE WITNESS: Okay. I will wait outside.

21 **(Jury not present, defendant present.)**

22 THE COURT: All right, sir. Please be
23 seated. Okay. Mr. Gilman.

24 MR. GILMAN: Yes, Your Honor. Mrs. Estrada
25 is now here.

1 THE COURT: Do you wish to call her as a
2 witness?

3 MR. GILMAN: Yes.

4 THE COURT: Ms. Estrada, please step
5 forward. Do you wish to bring the jury?

6 MR. GILMAN: Let's go with what we've got
7 first and then you can decide.

8 THE COURT: Ms. Estrada, I remind you that
9 you have been sworn to tell the truth. Please take the
10 witness stand. All right. Take the chair right now. All
11 right. Proceed, Mr. Gilman.

12 JOANNE ESTRADA,
13 having been first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 **BY MR. GILMAN:**

16 Q You are Joanne Estrada, correct?

17 A Yes.

18 Q You are the same Joanne Estrada that testified
19 earlier, correct?

20 A Yes.

21 Q And I remind you that you are still under oath?

22 A Uh-huh.

23 Q You were in court the other day when your main
24 supervisor from Harlingen, Mr. Zavala, was here, isn't
25 that correct?

1 A I wasn't here the same day. I think I was here
2 the day before.

3 Q And you know of all the evidence that -- all of
4 the records of Child Protective Services have been turned
5 over to the district attorney's office who subsequently
6 turned them over to me?

7 A As far as I know, yes.

8 Q And do these records indicate some of the other
9 records?

10 A (Reviewing) Yes. The defendant's records, yes.

11 Q That's one box. There's another box.

12 A I believe so. They appear to be.

13 Q And to your knowledge, these are all of the
14 records dealing with Melissa Lucio?

15 A They should be. I know I received some of them
16 last week, but that was the beginning of the -- it was
17 last week I received maybe a couple of more documents.

18 Q But I don't have those or they are not included
19 in this box?

20 A In the first giving of the file, they wouldn't
21 be included. They came in afterwards.

22 Q And then --

23 THE COURT: Where are they?

24 THE WITNESS: It was the last therapy
25 session note for Mrs. Lucio and Mr. Alvarez.

1 Q Conducted by whom?

2 A Beto Juarez.

3 Q And Beto Juarez is who?

4 A He's the therapist that was seeing Mrs. Lucio.

5 Q And he saw Mrs. Lucio during what period of
6 time?

7 A I believe he might have started in February of
8 this year. I don't know exactly, but I believe
9 approximately that's when he started. And the last time
10 he saw her, it was either the last of May or the beginning
11 of June, something like that.

12 Q And that was at you or your department's
13 request --

14 A Yes.

15 Q -- that Beto Juarez interviewed Melissa Lucio?

16 A That he provide counseling and therapy sessions,
17 yes, sir.

18 Q And for what purpose?

19 A It was court ordered by the CPS court.

20 Q When was that court order?

21 A I don't remember the date.

22 Q Was it before you came to work on this
23 particular file?

24 A It was after the twins were born.

25 Q Why would the court order -- and at whose

1 request would the court order interviews of Beto Juarez
2 when there's a criminal case pending on this lady?

3 A I don't remember.

4 Q Do you know who requested it? Was it done by
5 Child Protective Services or was it done by the State of
6 Texas? Was it done by any of the defense counsels?

7 A I don't remember who requested them.

8 Q And these records that are contained in these
9 boxes that I have here that you looked through briefly,
10 these are records that you normally maintain in your usual
11 course of business dealing with Mrs. Lucio and her family?

12 A Yes.

13 Q And these are made by you and other workers that
14 have worked on this case?

15 A Correct.

16 Q And they are made at or near the time that this
17 information becomes available to you; is that correct?

18 A We tend to file it as we get it.

19 Q So if Beto Juarez makes or has an interview
20 right around the first of June, it wouldn't be in these
21 documents?

22 A It depends on when he hands it over to me.

23 Q But if Mariah had fallen over backwards and
24 busted her head so that they had to take Mariah to the
25 emergency room of the hospital, those records would be

1 contained in here, if the foster parent told you that?

2 A Any records that were provided should be in that
3 file.

4 Q And your foster parents tell you what goes on
5 with the child's life, do they not?

6 A Yes.

7 Q Do they keep records themselves?

8 A They should, yes.

9 Q And do they turn those records over to you?

10 A Depending on the type of foster parent. If they
11 have an agency, they turn them over to the agency and they
12 would turn them over to us.

13 Q And are they -- do they keep the records as the
14 child develops?

15 A I'm not sure how they keep their records.

16 Q And how often do you review records with foster
17 parents?

18 A We visit the child when we speak to the foster
19 parent approximately at least once a month.

20 Q So during the period -- the two-year period,
21 two-plus year -- two years and two months period that
22 Mariah was under protection of Child Protective Services
23 and living in foster care, you saw that child once a
24 month? Not you, but workers.

25 A Previous worker or previous workers should have.

1 I don't know exactly how often they were seen.

2 Q And their reports would be reflected in these
3 two boxes?

4 A I believe so.

5 MR. GILMAN: I will introduce these. Mark
6 these boxes as evidence and put them in evidence, Judge.

7 MR. PADILLA: May I have an opportunity to
8 question the witness, Your Honor, before?

9 MR. GILMAN: I'll pass the witness.

10 **CROSS-EXAMINATION**

11 **BY MR. PADILLA:**

12 Q Mrs. Estrada, you had about a minute and a half
13 to review two boxes of documents. Is it your testimony
14 that all the documents pertaining to Mariah Alvarez and
15 Mrs. Lucio are included in those two boxes?

16 A I would have to go through every one of those
17 sheets.

18 Q Now, those documents also include not only
19 Mariah Alvarez and Melissa Lucio, but also the other
20 children that were removed from the residence; is that
21 correct?

22 A Correct.

23 Q And some of the documents contained other
24 children who have medical records which are not certified
25 and included in those reports; is that correct?

1 A I'm sorry. Can you repeat that?

2 Q Are there any medical records that are not
3 certified, that are included as exhibits in those two
4 boxes?

5 A There should be medical records of the other
6 children in there, yes.

7 Q Are they certified? Do they have the proper
8 authentication?

9 A What do you mean, by certified?

10 Q I am asking you: Those documents, how did you
11 get them, the medical records?

12 A We get them either from the agency or from the
13 foster parents.

14 Q And do you -- well, are any of those documents
15 or any of the information on the medical records
16 considered to be confidential by nature through CPS?

17 A Yes.

18 Q And when those documents are prepared by CPS, at
19 the time that they are prepared, there is an expectation
20 of privacy; is that correct?

21 A Yes.

22 Q Now some of those documents that are in there
23 have certain directives for treatment, directives of how
24 to handle children, things of that nature, which would be
25 totally unrelated to the case that we're involved in here

1 today, which is Mariah Alvarez; is that correct?

2 A Correct.

3 MR. PADILLA: Judge, I would argue that,
4 obviously, these matters, although they might be relevant
5 during the punishment, we would also argue, furthermore,
6 that they are unrelated, as well as question whether they
7 are business records, but we also object on the fact that
8 it does contain hearsay matters therein.

9 MR. GILMAN: Judge, I think --

10 THE COURT: I'm sorry. Go ahead.

11 MR. GILMAN: I think they are admissible
12 because it deals with other members of the family,
13 interacting with one another, and as other members of the
14 family interact with one another I think they are very
15 relevant.

16 MR. PADILLA: Again, Your Honor, this
17 witness is not the person who prepared the report, and is
18 testifying as to the authenticity.

19 There are also some matters in there that I
20 allege are probably hearsay, and there are also some
21 matters that should be protected and not disclosed clearly
22 as to the other children that are not a part of this
23 litigation.

24 And, Judge, we were very specific about
25 doing that.

1 MR. GILMAN: But the State relies on these
2 documents.

3 THE COURT: I will sustain the objection as
4 to those two exhibits in totality. Some of the them are
5 relevant, some of them as being hearsay and some of it as
6 being privileged. If there is a particular document that
7 you want to enter into evidence out of the two boxes, I
8 will be more than glad to entertain that document.

9 **REDIRECT EXAMINATION**

10 **BY MR. GILMAN:**

11 Q Mariah was born in September of '04; is that
12 correct?

13 A I do not know when she was born.

14 Q Well, you're the case worker.

15 A I took over the case after Mariah's passing. I
16 had never worked with Mariah.

17 THE COURT: At this time, we have gone
18 beyond CPS records, which was the object of this witness
19 out of the presence of the jury. We have a jury waiting.
20 Do you want to conduct your examination of Ms. Estrada in
21 the presence of the jury?

22 MR. GILMAN: Yes, sir, I guess so.

23 THE COURT: Take the boxes off, please, and
24 let's get the jury in.

25 THE BAILIFF: All rise for the jury.

1 **(Jury present, defendant present at 3:35**
2 **p.m.)**

3 THE COURT: You may be seated. Ladies and
4 gentlemen of the jury, again, I remind you that when we
5 take up legal issues outside of your presence, you're not
6 to concern yourselves for the reasons for it. You are
7 supposed to make your decision based only on what the
8 witnesses say. The comments of the attorneys are not
9 evidence. I have no right to make an opinion or comment
10 on any evidence. You're the only triers of the facts.
11 And you must make your decision based on your witnesses,
12 and the evidence introduced.

13 Mr. Gilman? Proceed, sir.

14 MR. GILMAN: Thank you, Judge.

15 **JOANNE ESTRADA,**
16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 **BY MR. GILMAN:**

19 Q Would you state your name again for the jury?

20 A Joanne Elizabeth Estrada.

21 Q Mrs. Estrada, you work for Child Protective
22 Services and you have testified previously; is that
23 correct?

24 A Correct.

25 Q And you are a case worker dealing with

1 Mrs. Lucio and her children; is that correct?

2 A Correct.

3 Q And you told us a few minutes ago outside the
4 presence of the jury that Beto Juarez was performing some
5 sort of counseling with Mrs. Lucio; is that correct?

6 A That is correct.

7 Q And this was as per a court order?

8 A Yes.

9 Q And this court order was from whom?

10 A From CPS court with Judge Flores.

11 Q That's not Judge Nelson who is presiding over
12 this case; is that correct?

13 A No, it is not.

14 Q And do you know when he, the judge, ordered this
15 counseling?

16 A I don't remember the date.

17 Q Was it sometime during this year, 2008?

18 A I don't remember the date. I'm sorry.

19 Q I'm not trying to hold you down to the date, but
20 can you give us a ballpark figure of when this took place?
21 Within the last 12 months?

22 A It was after the twins were born, after
23 October 7. I don't know the exact date after that.

24 Q So the twins were born to Mrs. Lucio in October
25 of '07; is that correct?

1 A Correct.

2 Q And some time after that, the judge ordered what
3 from Mrs. Lucio?

4 A The judge ordered parenting classes, individual
5 counseling, and visitations with the twins.

6 Q And why was -- at whose request was parenting
7 classes ordered and at whose request was visitation
8 ordered, and at whose request was this counseling?

9 A I don't remember who did the requesting.

10 Q Were you there?

11 A Yes.

12 Q Isn't that something you would make a note of?

13 A I make note of what the court orders are. I
14 didn't make note of who did the requesting.

15 Q And how many times -- well, who is Beto Juarez?

16 A Beto Juarez is the therapist who works under
17 contracted services with the department.

18 Q And as a therapist, he is to counsel someone
19 dealing in what particular area or field?

20 A Just basically the reasons related to the
21 removal of the children, any area in general that they
22 feel is needed.

23 Q It's a wide open contract like that?

24 A Basically we tend to focus on the removable of
25 the children and what the cause for the removable was.

1 Q In an effort to try to reunite the family?

2 A Typically, yes.

3 Q Isn't that what Beto Juarez was doing?

4 A He was providing therapeutic services.

5 Q I'm sorry?

6 A He was providing therapy to Mrs. Lucio.

7 Q And how often did he visit with Mrs. Lucio?

8 A I don't remember the number of times that he
9 visited.

10 Q Was it more than one?

11 A It was more than one.

12 Q Was it more than two?

13 A Yes, it was more than two.

14 Q Was it more than three?

15 A Yes.

16 Q Was it more than four?

17 A I don't know.

18 Q When was the last time that Beto Juarez visited
19 Mrs. Lucio, if you recall the time?

20 A It was either the end of May or the beginning of
21 June of this year.

22 Q And do you have a report that he made in
23 reference to that visit?

24 A Not on me.

25 Q Did he issue a report?

1 A He did give a report.

2 Q And who has that report?

3 A It would be in the office.

4 Q Of Child Protective Services?

5 A Yes.

6 Q Are you aware that I asked for copies of all
7 Child Protective Services documents dealing with Melissa
8 Lucio and her children?

9 A That you had requested them?

10 Q Yes.

11 A No.

12 Q You were not aware of them?

13 A I was aware that the DA's had requested them.

14 Q And when did you -- when were you aware that the
15 district attorney's office had requested them?

16 A I don't remember the date, but the day that I
17 came in to the court.

18 Q When you testified last?

19 A No. The first time I came in and testified. I
20 don't remember the date.

21 Q Which is about a week before you testified the
22 first time?

23 A I believe it was towards the end of June, but I
24 don't remember the date.

25 Q Are you aware that -- well, when you -- when you

1 first came to work for Child Protective Services, Mariah
2 had already passed away?

3 A When I first came to work?

4 Q Yes.

5 A No.

6 Q I'm sorry. When you took over this particular
7 case as the case worker, Mariah had already passed away?

8 A Correct.

9 Q But you reviewed her file, did you not?

10 A I can't say that I reviewed her file.

11 Q You are the case agent?

12 A I am the case worker.

13 Q And who is in charge of this case?

14 A I am.

15 Q And how can you make a recommendation on
16 anything if you haven't reviewed the entire file?

17 A Any recommendation is not made by me alone.

18 Q You don't make a recommendation?

19 A We basically -- staff cases and recommendations
20 are basically done through the supervisors and program
21 directors.

22 Q And you have never met with any supervisors or
23 program directors to make a recommendation in this case?

24 A In the case dealing with Mariah?

25 Q In the case dealing with Melissa Lucio.

1 A I have.

2 Q And how can you make a recommendation if you
3 have not reviewed all of the files?

4 A Basically, the -- from my understanding the case
5 with Mariah through CPS course was dismissed, and I tend
6 to the focus more on the children that are alive.

7 Q Isn't it true that the case was filed with the
8 courts in '04 when Mariah was born and that continues even
9 to this day?

10 A Yes.

11 Q So the case was never dismissed?

12 A The case involving Mariah as a party to the
13 case.

14 Q The case is all dealing with Melissa Lucio, is
15 it not?

16 A Yes.

17 Q So you don't know whether or not Mariah was
18 taken to Valley Regional Hospital sometime in the first
19 quarter of -- between January and April of '05?

20 A No.

21 Q And you're not aware of the fact that Mariah
22 used to have severe tantrums when she wasn't getting what
23 she wants and would sometimes throw herself on the floor
24 and hit herself in the head or hit her head on the floor?

25 A I was not aware of that.

1 Q And yet those are in the records. Are you aware
2 of that?

3 MR. PADILLA: I'm going to object, Your
4 Honor. I think what we have here counsel testifying, Your
5 Honor. He can ask what document was presented to the
6 witness, and allow her an opportunity to review them,
7 Judge, for her determination.

8 MR. GILMAN: She's saying that she has
9 reviewed some of the records. I'm asking her if she's
10 reviewed them.

11 THE COURT: Refer to the specific records,
12 then.

13 Q (By Mr. Gilman) Well, in December of '05 there
14 were records dealing with Mariah going to -- having
15 tantrums at the foster parents and her hitting her head on
16 the floor. Were you aware of that?

17 A No, I was not.

18 Q And you reviewed these files?

19 A I did not review Mariah's file.

20 Q Are you aware of in March of '06 that Mariah had
21 a self-inflicted injury?

22 MR. PADILLA: Again, Judge I object.

23 THE COURT: Show her the documents that
24 you're going to ask her about.

25 Q (By Mr. Gilman) I believe you testified earlier

1 that you observed Melissa Lucio with the children during
2 visitation period?

3 A Yes.

4 Q Were you aware of the visitation periods that
5 were conducted by Child Protective Services between
6 September of '04 and November of '06?

7 A I am aware that she had visitation during that
8 time.

9 Q Did you review any of the records?

10 A No, I did not read the visitation notes.

11 Q Wouldn't those records be important in reaching
12 a plan dealing with these children as well as Melissa
13 Lucio, or it doesn't make any difference?

14 MR. PADILLA: Your Honor, I object. First
15 of all, we got notice, Your Honor. I ask if she got
16 notice of this case. It's also immaterial, Your Honor.

17 THE COURT: Your response?

18 MR. GILMAN: I think it's relevant. It is
19 dealing with the children; it is dealing with Melissa
20 Lucio.

21 THE COURT: Their concern is Mariah.

22 MR. GILMAN: I am concerned with Mariah,
23 and to her cause of death, Judge.

24 THE COURT: I'm going to overrule it at
25 this time, and I will allow you to go into allow you to go

1 into it more specifically.

2 Q (By Mr. Gilman) The reactions and interactions
3 of Mariah's siblings, are you aware of any of that?

4 A I'm sorry. Can you repeat the question?

5 Q How are the children today that you observed?

6 A The children seem fine. They have a strong bond
7 with one another. Some are a little bit hyper. They like
8 to run around. The girls are learning how to ride bikes.

9 Q Aren't all of the children on medication?

10 A No.

11 Q Which ones are not on medication?

12 A Sara and Adriana.

13 Q So two out of the seven are not on medication --

14 A Two out of --

15 Q -- or eight --

16 MR. PADILLA: Again, I would argue as to
17 relevancy, Your Honor.

18 THE COURT: I'm going to sustain that
19 objection.

20 Q (By Mr. Gilman) What is the medication for, if
21 anything?

22 MR. PADILLA: Judge, again, I would object
23 to going into medication of the present children. It is
24 irrelevant.

25 MR. GILMAN: Judge, it is important.

1 THE COURT: I'm going to allow it to see
2 where you're going with it.

3 Q (By Mr. Gilman) What is the medication for, to
4 calm these kids down?

5 MR. PADILLA: Your Honor, I would ask -- I
6 object to leading, Your Honor.

7 THE COURT: I'm going to overrule the
8 objection. Go ahead.

9 Q (By Mr. Gilman) What's this for?

10 A I don't remember exactly what each medication is
11 for. I know that Rene and Robert are taking medication
12 for ADHD.

13 Q What is that?

14 A Hyperactive attention deficit disorder. I know
15 Richard is taking medication for ADHD and uresis.

16 Q And what?

17 A Uresis.

18 Q What is that?

19 A Bed wetting. I know Gabriel is taking
20 medication also for ADHD and uresis. I don't remember
21 other medication. I think Gabriel is also taking medicine
22 for depression.

23 Q Are you aware in the records of how many
24 different times Mariah was in different foster homes
25 during the time that she was removed from her parents in

1 '04?

2 A I believe she was just in one home.

3 Q Would it surprise you to know that she had been
4 in three different foster homes?

5 A Ah, yes.

6 Q She was in one home from September of '04 to
7 June of '06. She was in another home in early July of
8 '06, and then another home from the end of July of '06 to
9 the time of her reunification of her family. Are you
10 aware of all of that?

11 A No.

12 Q You don't know why she was moved from foster
13 care?

14 A I do not know.

15 Q Is that usually what happens?

16 A It depends on case to case.

17 Q If a child is injured or hurt when they're in
18 foster care, is there a report that they are supposed to
19 fill out?

20 A Yes.

21 Q Does this look like a report that was filled
22 out?

23 A Ah, yes.

24 Q Is that one of your forms in your department?

25 A Yes, it is.

1 Q (By Mr. Gilman) And this was a report that was
2 made -- in March of '06?

3 A Ah, yes.

4 MR. GILMAN: Defendant's Exhibit No. 19 is
5 being offered to the State.

6 MR. PADILLA: (Reviews document).

7 Q (By Mr. Gilman) Have you ever seen this document
8 before?

9 A No, I have not.

10 Q You've never seen it?

11 A No.

12 Q So you haven't reviewed the files?

13 A No.

14 Q Mrs. Estrada, wouldn't it be a good idea to
15 review all of the files dealing with a particular family
16 if you're the case worker involved in it?

17 A I don't know. It just depends. I mean, I tend
18 to review the files and organize files for the children
19 that I am working with. And I've never gotten anything
20 from Mariah and I just never opened the file pertaining to
21 her.

22 Q But you are not interested in what's happened to
23 the other children prior to you taking over the case?
24 Doesn't that history tell you something?

25 A I mean, I knew the basics of it. I didn't go

1 into Mariah's file and study it.

2 Q What about the other children that you're
3 working with today?

4 A I have reviewed their file.

5 Q Clear back to the beginning?

6 A Ah, I don't know if I have gone through every
7 single sheet in the file, but I have looked through the
8 file to obtain information that I needed at a specific
9 time.

10 Q So you take things as you need them?

11 A Typically, yes.

12 Q Is that how it goes?

13 A It just depends on the case.

14 Q Does this look like a document that you would
15 provide for someone? Does that look like one of your
16 forms?

17 A It doesn't look like one of our forms. It looks
18 like an agency form.

19 Q An agency for what?

20 A Child placement agencies.

21 Q Is this dealing with Mariah?

22 A Yes, it is.

23 Q Is that an incident that took place during
24 somebody else's communications?

25 A It should be, yes.

1 Q And you've never seen this document before?

2 A No.

3 Q And if this was a document that was handed to me
4 from Child Protective Services through the district
5 attorney's office, you couldn't dispute that, could you?

6 A Ah, no.

7 Q Does this look like something that would be
8 generated through your office, your department?

9 A This is a contact sheet from the agency as well.

10 Q Okay. Would this be kept in the normal course
11 of business dealing with Child Protective Services?

12 A Yes.

13 Q And the same with this other document?

14 A Which one?

15 Q This one here?

16 A Ah, yes.

17 Q So both of these documents that I am showing you
18 are related to Child Protective Services in keeping up
19 with what is going on with these children?

20 A Correct.

21 MR. GILMAN: I want to introduce 19, 20 and
22 21, Judge.

23 MR. PADILLA: We have no objections.

24 THE COURT: It'll be received into
25 evidence.

1 **(Defendant's Exhibit Number 19-21 admitted)**

2 MR. GILMAN: Can I publish them to the
3 jury?

4 THE COURT: Yes, sir.

5 Q (By Mr. Gilman) This is another document. Does
6 this look like a document that you keep in the normal
7 course of your business?

8 A Ah, yes.

9 Q Do you recognize this document?

10 A No, sir.

11 Q You've never seen this before?

12 A No.

13 Q But this looks like a document that you would
14 normally find in some of your files?

15 A Yes, it is.

16 MR. PADILLA: Judge, we would object to it
17 being a separate exhibit. This should go with the other
18 exhibits already offered. We ask that this document be
19 attached to that exhibit rather than a separate number.
20 May we approach?

21 THE COURT: You need to take this up
22 outside the presence of the jury?

23 MR. CORDOVA: Yes, sir.

24 THE COURT: Ladies and gentlemen of the
25 jury, let me ask you to step out while we take up legal

1 arguments.

2 THE BAILIFF: Everybody please rise.

3 **(Jury not present 4:04 p.m.)**

4 THE COURT: You may be seated. Thank you.

5 MR. PADILLA: Your Honor, what has been
6 marked as Defendant's Exhibit No. 22, Your Honor, appears
7 to be some medical records -- or some records from the
8 DHS, and what also appears to be medical and dental
9 treatment thereon. This was also the incident which is
10 marked as Defendant's Exhibit No. 19, Judge. We would ask
11 the Court to consider attaching these three pages to
12 Number 19. I think this confuses the jury, giving the
13 jury the impression that these are multiple treatments
14 when, in fact, it involves the same treatment.

15 MR. GILMAN: They are separate documents,
16 Judge.

17 THE COURT: I know. But do they include
18 the same event?

19 MR. GILMAN: They are all fro the same day.

20 THE COURT: Put it all together. The jury
21 still gets to read them all. So are you making an oral
22 motion to attach Exhibits 22 to 19 and make that a part of
23 the other?

24 MR. PADILLA: Correct.

25 THE COURT: Any objections?

1 MR. GILMAN: Well, yeah. They are separate
2 documents, Judge. The jury can look at them to see the
3 date just the same as we can. And she doesn't know what
4 they are. She just knows that they were in her file. So
5 I can't really put them together. I can't put much of
6 anything together.

7 THE COURT: Well, my sense is if they
8 happened on the same date.

9 MR. GILMAN: The only problem with that,
10 Judge, is that we are assuming the right hand knows what
11 the left hand is doing. And so far I have yet to see
12 anything in Child Protective Services where one person
13 knows what the other person is doing.

14 THE COURT: I'm going to go ahead and allow
15 you to introduce it as a separate, unless there is any
16 objections to that.

17 MR. PADILLA: No, sir.

18 THE COURT: -- as a separate document, and
19 just make the argument that it's together. What other
20 objections do you have --

21 MR. PADILLA: Then I want to take this
22 witness on voir dire concerning the documents.

23 THE COURT: You can take her on voir dire.
24 Why don't you give that to Mrs. De Ford and let her look
25 at that?

1 MR. PADILLA: Can I do it in the presence
2 of the jury? Or do you want to do it outside the presence
3 of the jury?

4 THE COURT: Outside the presence of the
5 jury.

6 MR. PADILLA: May I approach the witness?

7 THE COURT: Yes, sir.

8 **VOIR DIRE EXAMINATION**

9 **BY MR. PADILLA:**

10 Q I'm going to show you what has been marked as
11 Defendant's Exhibit No. 22, and ask you -- you have
12 identified this as a business record from the department,
13 correct?

14 A Correct.

15 Q And it involves an incident that allegedly
16 happened on or about when, ma'am?

17 A 3/23/06.

18 Q And there is an attachment to it dated 3/23/05.
19 Do you know when that document was attached to pages one
20 and two of Exhibit No. 22?

21 A No.

22 Q No? Now, the defense has already offered
23 Exhibit No. 19, which I will draw your attention to it.
24 Does it appear that the last page of this exhibit is the
25 treatment for the incident that allegedly happened on

1 Defendant's Exhibit No. 19?

2 A (Reviewing). It would appear like it is.

3 Q Again, it appears that the date of this incident
4 the date signed is 3/23/06, correct?

5 A Correct.

6 Q And Exhibit 22 has the date of the incident of
7 medical treatment of 3/23/05; is that correct?

8 A Yes.

9 Q I am just asking if you have any personal
10 knowledge concerning this document and the dates on those
11 documents?

12 A I don't have any personal knowledge. I have not
13 seen those before. So I have no personal knowledge or
14 opinion of those.

15 Q Now, ma'am, I am going to draw your attention to
16 State's Exhibit No. 32. It contains the name of the child
17 as Mariah Alvarez, correct?

18 A Mariah Alvarez, yes.

19 Q It has the month and year of March of 2006?

20 A Correct.

21 Q Attached to it are some medical treatment for
22 Mariah Alvarez dated 3/23/05. Now, you said you never
23 did -- you don't recall seeing the document before. Can
24 you explain or attempt to explain the difference in the
25 dates?

1 A Honestly, it looks like it could be a five --

2 THE COURT: Mrs. Estrada? I am having a
3 hard time hearing you. I'm sorry.

4 THE WITNESS: Basically, I would not be
5 able to make out the last number. It could be a five, or
6 it could be just cut off. It doesn't seem to be all
7 there.

8 MR. PADILLA: That's all I have, Your
9 Honor.

10 THE COURT: Bring the jury back.

11 MR. GILMAN: I am offering it.

12 THE COURT: Any objections to Defendant's
13 Exhibit No. 22, the document attached?

14 MR. PADILLA: Yes, sir, I believe that --
15 **(Jury present at 4:11 p.m.)**

16 THE COURT: You may be seated. Thank you.
17 You all approach.

18 **(Discussion on the record at the bench.)**

19 THE COURT: Other than the objection, do
20 you have any other objection?

21 MR. PADILLA: No, Your Honor.

22 THE COURT: I'm going to go ahead and admit
23 it, then you can make your argument with regard to that.

24 **(Defendant's Exhibit Number 22 admitted)**

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JOANNE ESTRADA,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION (CONT'D)

BY MR. GILMAN:

Q Do you know when the last time the twins visited their mother?

A I don't know when the last time was, no.

Q Did they visit their mother at all in June?

A I don't remember.

Q Did they visit their mother at all in May?

A I don't remember exactly when they visited.

Q Did they visit at all in April?

A They should have visited, yes, in April.

Q But you don't know for sure whether it's May or June?

A There was a period when the jail was not allowing Mrs. Lucio visitations. And I don't remember the exact date of that. But during that time the twins did not visit.

Q And after that period ended, was visitation continued?

A The foster parents were taking the twins to the jail, yes.

Q Were you aware of every time that the twins went to go see their mother?

1 A I'm not aware of what dates they got to see her
2 or not.

3 Q Are you aware of any time that the other
4 children that are in foster care visit their mother?

5 MR. PADILLA: Your Honor, again, I'm going
6 to object to the relevancy or materiality of the other
7 children.

8 THE COURT: I'm going to sustain the
9 objection. It's only what has to do with this case.

10 Q (By Mr. Gilman) You recognize this?

11 A The whole thing?

12 Q This hand full of documents?

13 A (Reviewing) I have seen documents like this
14 before, but I had never seen Mariah's.

15 Q Are these documents that you would normally have
16 in your file?

17 A Yes, they are.

18 Q And these are all dealing with Mariah?

19 A Ah, yes.

20 MR. GILMAN: I move for the introduction of
21 Defendant's Exhibit No. 23.

22 MR. PADILLA: We have no objections, Your
23 Honor.

24 THE COURT: They're admitted.

25 **(Defendant's Exhibit Number 23 admitted)**

1 MR. GILMAN: May I publish it to the jury?

2 THE COURT: Yes.

3 Q (By Mr. Gilman) Are you aware, Mrs. Estrada,
4 that the twins visited their mother yesterday?

5 MR. PADILLA: Your Honor, again, what is
6 the relevancy? It is also irrelevant and immaterial.

7 THE COURT: Sustained.

8 MR. GILMAN: Pass the witness.

9 **CROSS-EXAMINATION**

10 **BY MR. PADILLA:**

11 Q Mrs. Estrada, good afternoon. I will be asking
12 you some questions. Sometimes I mumble. Just let me know
13 so I can be a little clearer.

14 Now, normally when Child Protective
15 Services gets involved and the children are removed, why
16 is it that the department gets involved?

17 A Ah, there is a report called in and the
18 department investigates.

19 Q When the children are removed because you
20 believe the report is well founded, what happens then?

21 A The children are removed. We petition the court
22 to validate the removable of the children. We start a
23 legal proceeding and the children are placed in foster
24 care.

25 Q And do you then -- is the parent or parents

1 allowed the opportunity to appear in court to contest the
2 issue of why the children were removed?

3 A Yes, they are.

4 Q Normally after a hearing, what happens? If the
5 children is left under CPS conservatorship, what happens
6 then?

7 A Typically, the parents are given an opportunity
8 to participate in court ordered services and demonstrates
9 the ability to protect and care for their child.

10 Q And is it the department's position in these
11 type of cases that the department is going to make every
12 effort available to try to reunite the family, to get the
13 family back together?

14 A Typically, yes.

15 Q And normally what you have identified, or at
16 least through some questioning, you identified some
17 services you provided. Are those normally required as a
18 result of court order?

19 A Those tend to be the normal services that are
20 court ordered.

21 Q If the safety of a child is not a concern, does
22 CPS normally follow what the judge instructs the
23 department to do?

24 A If there is a court order, the department will
25 follow it to the best of its abilities.

1 Q In these cases -- in this case, there are
2 numerous court orders affecting the children, correct?

3 A Ah, yes.

4 Q And, again, whether a child or children visit
5 with the parents, that's usually mandated by the judge's
6 order, correct?

7 A Correct.

8 Q And if a person -- a child is taken to see the
9 parent, that's normally within the court order, correct?

10 A Correct.

11 Q Now, when a child is placed in foster care, how
12 does that work?

13 A What do you mean?

14 Q Does the CPS office have foster families that
15 the children are assigned to?

16 A Children are placed in foster homes. Depending
17 on the availability, we try to keep all the siblings
18 together, if available. If not, we try to keep them in
19 close proximity of each other.

20 Q Does the law require family visits when the
21 siblings get together?

22 A Sibling visits are not always court ordered, but
23 we do try to keep the sibling group well bonded. So we do
24 offer visits just for the brothers and sisters. We do
25 want to keep the sibling bond alive. So we do offer

1 sibling visits between the brothers and sisters.

2 Q And you also attempt to keep -- to retain some
3 kind of bond with the mother and father and children, if
4 possible?

5 A If it's possible and court ordered, yes.

6 Q Is it typical for children to be moved from one
7 foster home to another?

8 A It depends on the case.

9 Q It's not extraordinary if a child gets moved
10 from one foster home to another, that could be just a
11 matter of course because that's what the department feels
12 is in the child's best interest, correct?

13 A Yes.

14 Q Now, when you go into court, CPS is named as the
15 managing conservator, correct?

16 A Correct.

17 Q And the parents are the possessor conservators.
18 So the parents are allowed specific visitation by the
19 court order, correct?

20 A Correct.

21 Q However, CPS is responsible for doing everything
22 that a parent would be, like making sure that the child is
23 clothed, fed, receives medical treatment, things of that
24 nature; is that correct?

25 A Did you say, and then CPS would be responsible?

1 Q Yes.

2 A Yes.

3 Q Now, your involvement in the Mariah Alvarez case
4 was under your direct supervision for how long?

5 A I was never Mariah's case worker.

6 Q By the time you got the case, Mariah Alvarez had
7 already died, correct?

8 A Correct.

9 Q If the child is injured while in foster care,
10 are the foster parents allowed or required to receive
11 medical treatment for the child?

12 A Yes.

13 Q And that is some of the reports that you have
14 identified previously, correct --

15 A Correct.

16 Q -- that the child received --

17 A Correct.

18 Q Now you've identified Beto Juarez as a
19 therapist?

20 A Correct.

21 Q And any therapist --

22 A (Coughing) I'm sorry.

23 Q -- would be required to visit the child or the
24 children in any case also pursuant to court order?

25 A I'm sorry. Can you repeat that?

1 Q Would Beto Juarez be contracted to counsel the
2 children pursuant to court order?

3 A Beto Juarez is not counseling the children.

4 Q Who is now?

5 A Rene, Robert and Richard see Patty Navarro about
6 once every other week. Richard also sees Jesse
7 Applewhite. Gabriel and Adriana see Casey Monroe weekly,
8 and Sarah sees Sharon Spears.

9 Q So it your responsible then to supervise them
10 and to ensure that the children are receiving the required
11 counseling?

12 A Yes.

13 MR. PADILLA: Pass the witness.

14 **REDIRECT EXAMINATION**

15 **BY MR. GILMAN:**

16 Q Mrs. Estrada, you don't have any evidence at all
17 of Melissa Lucio's being physically abusive to any of the
18 children, do you, in your file?

19 A That I have come across or read in the file, no.

20 Q And in your visitation that is court ordered by
21 another judge, if there were any indications that you felt
22 a child would be endanger in visiting a parent, you would
23 speak out, wouldn't you?

24 A Correct.

25 Q And your department is represented by the -- by

1 an attorney, right?

2 A Correct.

3 Q And that attorney is employed by the district
4 attorney's office of Cameron County; isn't that right?

5 A Correct.

6 Q So if there is a court order visitation of these
7 twins that were born in October of '07, and if there is
8 court order of the other children of Melissa Lucio by
9 court order, then there must have been no opposition from
10 the State of Texas?

11 MR. PADILLA: Your Honor, I object. That
12 calls for -- assumes facts not in evidence, Your Honor.

13 MR. GILMAN: Well, there wasn't any --

14 THE COURT: Hold on just a second. It's
15 what she knows. She can testify as to what she knows.
16 Only what she knows.

17 Q (By Mr. Gilman) There is no opposition that you
18 have ever observed from the State in reference to any of
19 this visitation?

20 A For the older children, I was not present when
21 the court orders came out, so I wouldn't know. For the
22 twins, I don't remember any opposition.

23 MR. GILMAN: Pass the witness.

24 THE COURT: Mr. Padilla, anything further?

25 MR. PADILLA: May I have a second?

1 THE COURT: Yes, sir. Do we need to excuse
2 the jury for just a minute?

3 MR. PADILLA: No.

4 **(Discussion on the record at the bench.)**

5 THE COURT: I don't know how far along you
6 are.

7 MR. GILMAN: I've only got a page and a
8 half more to go.

9 **(End of bench conference.)**

10 THE COURT: Proceed, Mr. Padilla.

11 MR. PADILLA: Your Honor, I just showed it
12 to counsel. I need this witness to identify it. I'm
13 going to be offering it. May I approach?

14 THE COURT: Yes, sir.

15 **RECROSS-EXAMINATION**

16 **BY MR. PADILLA:**

17 Q Mrs. Estrada, I'm going to show you what has
18 been marked as State's Exhibit No. 41. This is a document
19 in Cause Number 2004-09-67-NA. Are you familiar with this
20 document, ma'am?

21 A Ah, yes. I have seen that before.

22 Q Is there an affidavit that was filed in that
23 cause number?

24 A Yes, it is.

25 MR. PADILLA: At this time, I am going to

1 offer State's Exhibit No. 41, Your Honor.

2 THE COURT: State's Exhibit number what?

3 MR. PADILLA: State's Exhibit No. 41.

4 MR. GILMAN: I don't have any objection.

5 THE COURT: It will be admitted.

6 **(State's Exhibit Number 41 admitted)**

7 MR. PADILLA: May I publish it to the jury?

8 THE COURT: Yes.

9 MR. PADILLA: Pass the witness.

10 THE COURT: Mr. Gilman, any further
11 questions?

12 MR. GILMAN: Nothing further of this
13 witness.

14 THE COURT: May this witness now be
15 excused? Mr. Gilman?

16 MR. GILMAN: Yes, sir.

17 THE COURT: Mr. Padilla?

18 MR. PADILLA: Yes, sir.

19 THE COURT: Mrs. Estrada, you may be
20 excused as a witness. Thank you. Call your next witness.

21 (Witness excused at 4:35 p.m.)

22 MR. GILMAN: May we approach?

23 THE COURT: You know what, we are going to
24 take something outside of your presence just for a minute.
25 So I am going to ask you to step out. Won't be anything

1 longer than five minutes. So you got a quick potty break
2 but not anything more.

3 (Jury not present.)

4 THE COURT: Okay. The jury is out.

5 MR. GILMAN: Judge, I have two witnesses,
6 Norma Villanueva that you have previously said you would
7 not allow her to testify at this stage of the trial.
8 However, she was going to be testifying to a lot of what
9 Child Protective Services has in their documents, part of
10 which is dealing with the other children that the latest
11 bit of evidence that the State introduced includes. And
12 she was --

13 THE COURT: I haven't seen what that
14 evidence is. I understand it's an affidavit, but I don't
15 know --

16 MR. PADILLA: Yes, Your Honor. It's an
17 affidavit. May I approach, please?

18 THE COURT: Yes. Go ahead.

19 MR. GILMAN: And then, my last witness that
20 I am thinking of calling is Dr. Pinkerman during the guilt
21 or innocence stage. And if the Court is not going to
22 allow me to have Dr. Pinkerman testify, then I would like
23 to make a bill of particulars on that also.

24 THE COURT: Again --

25 MR. GILMAN: And that would probably be

1 my --

2 THE COURT: Again, what are you offering
3 Dr. Pinkerman on?

4 MR. GILMAN: Dr. Pinkerman has done some
5 tests on Mrs. Lucio and has also reviewed with her all of
6 what has transpired during this period of time. He has
7 also reviewed the video statement, and he will be offering
8 testimony about Mrs. Lucio's propensity for violence, if
9 any.

10 THE COURT: Her propensity for violence is
11 something that would be done with mitigation and future
12 dangerousness. I don't think it's appropriate in the
13 guilt/innocence.

14 MR. GILMAN: Well, part --

15 THE COURT: Educate me if you think I am
16 wrong.

17 MR. GILMAN: Part of his testimony is that
18 Mrs. Lucio has all of the signs of being a battered woman.
19 And as a battered woman, she takes blame for everything
20 that goes on in the family. And if dealing with a male
21 figure such as a husband she doesn't find fault with
22 anything that a husband does, she takes the blame for it.
23 She takes the blame for everything that goes on in the
24 house.

25 THE COURT: Then you do by -- you try -- by

1 implication prove something that she did not do without
2 bringing any direct testimony of it.

3 MR. GILMAN: No, the --

4 THE COURT: I mean, I am having problems --

5 MR. GILMAN: The video statement goes hand
6 and glove with the battered woman syndrome. She shows all
7 of the signs in that video statement of being a battered
8 woman.

9 THE COURT: Well, in the statement she did
10 not admit killing the child.

11 MR. GILMAN: No, she did not.

12 THE COURT: She admitted actions that she
13 took that could have resulted in the death. But she
14 denied ever having anything to do with the killing of the
15 child. So, again, I am having a hard time figuring out
16 how it goes to the guilt or innocence. I can see it as to
17 mitigation, but I don't see it as to guilt or innocence.
18 So I will make the same ruling. And you're welcome to
19 make your bill of particulars.

20 MR. GILMAN: I need a bill of particulars.

21 THE COURT: That's fine. I'm sorry. I
22 didn't give you a chance to respond.

23 MR. PADILLA: That's fine. Can I go across
24 the hall?

25 THE COURT: Hold on. Not yet. Almost.

1 Yeah. We'll take a --

2 MR. PADILLA: Are you doing your bill right
3 now?

4 THE COURT: Is Dr. Pinkerman here?

5 MR. GILMAN: Yeah, he is here.

6 THE COURT: Is he?

7 MR. GILMAN: Yes. I asked him to come over
8 because I thought we were going to use --

9 THE COURT: My sense of what to do is to go
10 ahead and rest in front of the jury, if that's what you
11 choose to do, make your bill of particulars after the jury
12 is excused, bring them back tomorrow morning depending
13 upon on whether you've got rebuttal witnesses, have the
14 jury charge argument at 9:00 and try to have the jury
15 charge ready and argue the case at about 10:30.

16 MR. PADILLA: Your Honor, we need to
17 discuss the doctor from San Antonio.

18 THE COURT: Yeah, I am just trying to
19 finish with the jury because they are kind of
20 inconvenienced. I need to treat it as expeditiously as
21 possible. If you do have rebuttal witnesses because what
22 you are talking about is the witness that you are bringing
23 down is also as to guilt or innocence as to the mitigation
24 of future dangerousness.

25 MR. PADILLA: She's also going to testify

1 to the eye -- the retina, the retina hemorrhage. If
2 that's the testimony we may not need him. Then we have
3 the other --

4 THE COURT: Well, okay. We will take a
5 five minute break. Confer with Mrs. De Ford and
6 Mr. Krippel and then come back in five minutes.

7 MR. CORDOVA: Your Honor, can we confer
8 with my client? We may need more than five minutes. We
9 will need to visit with my client about certain issues.

10 THE COURT: Sure. Tell the jury -- we will
11 give you ten minutes. Tell the jury they've got ten
12 minutes because I told them that we were not going to have
13 much. So you've got ten minutes, Mr. Padilla, to go your
14 business and come back.

15 **(Recess from 4:42 p.m. to 4:53 p.m..)**

16 THE COURT: Mr. Gilman, are you ready?

17 MR. GILMAN: Yes, sir. I have my witness,
18 Dr. Pinkerman, here in the courtroom. And with the
19 Court's permission, we will put a bill of particulars
20 together with the court reporter.

21 THE COURT: My suggestion is that you do
22 that after you rest in front of the jury so we can excuse
23 the jury.

24 MR. GILMAN: That's fine, sir.

25 THE COURT: And then you're more than

1 welcome to do that. How much time do you think we're
2 going to need for the charge conference?

3 MR. PADILLA: I don't anticipate more than
4 an hour, Judge. I have looked at the charge that the
5 Court gave us and it's pretty boiler plate.

6 THE COURT: Among the corrections that were
7 made by everybody, with the exception of -- I have not
8 made a decision on the lesser included offense of injury
9 to a child, but I'll be glad to accept whatever cases you
10 have in the morning and make a decision.

11 MR. PADILLA: All right. What time are we
12 having the conference?

13 THE COURT: My sense is to do it at 9:00.

14 MR. GILMAN: All right.

15 THE COURT: But depending on whether you
16 are going to have rebuttal witnesses.

17 MR. PADILLA: Judge, at this point it
18 doesn't appear that we are.

19 THE COURT: Pardon me?

20 MR. PADILLA: We are not going to have any
21 rebuttal witnesses. We will save them for the punishment
22 phase of the jury.

23 THE COURT: All right. Bring in the jury.

24 (Jury enters at 5:00 p.m.)

25 THE COURT: Y'all may be seated. Thank you

1 very much. What say you, Mr. Gilman?

2 MR. GILMAN: Judge, at this time we'll
3 rest.

4 THE COURT: Ladies and gentlemen of the
5 jury, does the State rest and close?

6 MR. PADILLA: Judge, we close, Your Honor.

7 THE COURT: Do you close?

8 MR. GILMAN: We close.

9 THE COURT: Ladies and gentlemen of the
10 jury, at this time both parties have rested and closed,
11 which means that the evidence -- part of the case is over.
12 Tomorrow, we have to have a charge conference with regards
13 to the written instructions to the jury. Both sides have
14 already submitted their instructions to me. I have
15 reviewed them. We will have arguments on that and then we
16 will be ready to submit it to you probably by
17 10:00 o'clock tomorrow morning. So tomorrow morning come
18 in at 10:00. We will try to have the charge ready to go
19 so you can have arguments and start deliberating.

20 Again, I will remind you, you are not
21 supposed to discuss this case with anybody. Do not listen
22 to the news, television or radio. Do not let anybody
23 discuss this case around you. If they do, walk away. If
24 they try to talk to you about this case, report it to me
25 immediately please. You are not supposed to make any.

1 decision at all until all of the evidence is in, which is
2 now, have the written charge in front of you with regards
3 to the instructions as to the law and then hear the
4 arguments of the attorneys. Only after all that takes
5 place and you retire to the jury room and you are all
6 together should you start discussing the case and the
7 evidence.

8 See you tomorrow morning at 10:00 o'clock.
9 Thank you very much. All of the evidence that has been
10 admitted, you will have an opportunity to review. All of
11 you will have an opportunity to review all of it.

12 (Jury recessed at 5:02 p.m.)

13 THE COURT: Okay. You wish to propose a
14 bill of particulars?

15 MR. GILMAN: Yes, sir.

16 THE COURT: I don't think I have to be
17 present for that.

18 MR. GILMAN: No, sir. I think we can just
19 do it between the three of us.

20 THE COURT: You get with Mr. Flores. We
21 will see you tomorrow morning at 9:00 for the charge
22 conference.

23 MR. PADILLA: Yes, sir.

24 MR. GILMAN: Yes, sir.

25 THE COURT: Going back on the record. Will

1 you please raise your right hand?

2 THE WITNESS: Yes, sir.

3 **(Witness was sworn in by the Court.)**

4 THE COURT: Do you solemnly swear to tell
5 the truth, the whole truth and nothing but the truth so
6 help you God?

7 THE WITNESS: I do.

8 THE COURT: Please be seated, sir.

9 THE WITNESS: Thank you.

10 **JOHN E. PINKERMAN,**

11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 **BY MR. GILMAN:**

14 Q Okay. Would you state your name for the Court,
15 sir?

16 A John Edward Pinkerman.

17 Q And you reside here in Cameron County, do you
18 not, sir?

19 A Yes, sir.

20 Q Okay. And your profession is what, doctor?

21 A Clinical psychologist.

22 Q Okay. And a clinical psychologist, what kind of
23 training do you have?

24 A I have a PhD in clinical psychology that was
25 granted from the University of Detroit Mercy Hospital in

1 1994.

2 Q Okay. And what other educational backgrounds do
3 you have?

4 A Master's degree in 1981.

5 Q Okay. And you've been asked to testify in this
6 case by me; is that correct?

7 A Yes.

8 Q And your testimony during the guilt and
9 innocence stage would be what? What were you going to be
10 testifying to in the guilt or innocence stage?

11 A On the basis of my review of information,
12 consultation with additional experts, and the evaluation
13 that I have done with the defendant Mrs. Lucio, I was
14 going to testify about the characteristics and makeup of
15 her psychological functioning. I was also going to
16 address how her demeanor, both immediately after the
17 incident and during the interrogation, may be understood
18 by understanding and appreciating the psychological
19 elements and previous history and background that she has
20 lived through. I was also going to address the notion of
21 how difficult it might have been for her to step into some
22 of the treatment, even though it was minimally offered.
23 And those are the highlights.

24 Q Okay. And prior to your testimony, you did
25 review the interrogation video; is that correct?

1 A Yes, sir.

2 Q All right. Thank you. There is no exhibits.

3 Do you have a curriculum vitae with you?

4 A Not with me.

5 Q All right. That's it. Thank you.

6 MR. GILMAN: I will offer Defendant's
7 Exhibit No. 24 as a curriculum vitae of Dr. Pinkerman.
8 It's for the Bill of Particulars.

9 (Defendant's Exhibit Number 24 admitted for
10 Bill of Particulars No. 2)

11 (Recess from 5:14 p.m. to 9:00 a.m., July
12 8, 2008.)
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1 THE STATE OF TEXAS:

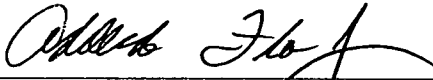
2 COUNTY OF CAMERON:

3 CERTIFICATE OF COURT REPORTER

4 I, ADELAIDO FLORES, JR, Official Court Reporter in
5 and ior the 138th Judicial District Court of Cameron
6 County, State of Texas, do hereby certify that the above
7 and foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-entitled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits, if
15 any, admitted by the respective parties.

16 WITNESS MY OFFICIAL HAND on this the 7th day of July,
17 2009.

18 
19 ADELAIDO FLORES, JR, Texas CSR
20 Official Court Reporter
21 138th District Court
22 974 East Harrison Street
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24 (956) 550-1489
25 Certificate No. 1117
Expiration Date: 12/31/08

Adelaido Flores, Jr.
Certified Shorthand Reporter